

CONTRACT FOR SUPPLIER SERVICES

Section 1 - FORM OF CONTRACT

CONTRACT FOR : **Support to the facilitation of forest governance reforms in Guyana, Liberia, Ghana, Republic of Congo and Cameroon**

PURCHASE ORDER NUMBER : **PO 8391**

THIS CONTRACT is made

BETWEEN : The Secretary of State for International Development at the Department for International Development, Abercrombie House, Eaglesham Road, East Kilbride, G75 8EA ("**DFID**");

AND : Palladium International Limited ("**Supplier**")
whose principal place of business, or, where the Supplier is a company, whose registered office is situate at 2nd Floor Turnberry House, 100 Bunhill Row, London, EC1Y 8ND.

(and DFID and the Supplier together shall be the "**Parties**").

WHEREAS:

- A.** DFID requires the Supplier to provide the Services to DFID (the "Recipient"); and
- B.** the Supplier has agreed to provide the Services on the terms and conditions set out in this Contract.

IT IS HEREBY AGREED as follows:

1. Documents

This Contract shall be comprised of the following documents:

Section 1	Form of Contract
Section 2	Standard Terms and Conditions
Section 3	Terms of Reference
Section 4	Special Conditions
Section 5	Schedule of Prices
Section 5	Schedule of Prices – Detailed Proformas
	Technical Proposal
	Commercial Proposal

2. Contract Signature

If the original Form of Contract is not returned to the DFID Contract Officer (as identified in Section 4) duly completed (including the applicable Purchase Order Number at the top of Section 1), and signed and dated on behalf of the Supplier within **15 working days** of the date of signature on behalf of DFID, DFID will be entitled, at its sole discretion, to declare this Contract void.

No payment will be made to the Supplier under this Contract until a copy of the Form of Contract, signed on behalf of the Supplier, is returned to the DFID Contract Officer.

3. Commencement Date and End Date of Initial Period

The Services shall commence on 5 July 2019 and the end date of the Initial Period shall be 4 July 2022.

4. Financial Limit

Payments under this Contract shall not, in any circumstances, exceed £5,240,496.80 exclusive of any government tax, if applicable.

5. Programme Name

The Programme Name to which this Contract relates is Forest Governance, Markets and Climate Programme.

6. Time of the Essence

Time shall be of the essence as regards the performance by the Supplier of its obligations under this Contract.

Signed by an authorised signatory
for and on behalf of
The Secretary of State for
International Development

Name:

Position:

Signature:

Date:

Signed by an authorised signatory
for and on behalf of the Supplier


Name:

Palladium International Limited

Position:

Signature:

Date:



Department for International Development (DFID)

Standard Terms and Conditions – Service Contracts

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Preliminaries

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Contract, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (Definitions) or the meaning set out in the relevant Schedule in which that capitalised expression appears.
- 1.2 If a capitalised expression does not have an interpretation in Schedule 1 (Definitions) or the relevant Schedule, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- 1.3 The interpretation and construction of the Contract shall be subject to the following provisions:
- 1.3.1 clause headings shall not affect the interpretation or construction of the Contract;
 - 1.3.2 a reference to Law includes a reference to that Law as amended, consolidated or re-enacted from time to time;
 - 1.3.3 references to a **“person”** includes a natural person and a corporate or unincorporated body;
 - 1.3.4 words in the singular shall include the plural and vice versa;
 - 1.3.5 references to **“representations”** shall be construed as references to present facts, to **“warranties”** as references to present and future facts and to **“undertakings”** as references to obligations under this Contract;
 - 1.3.6 words **“including”, “other”, “in particular”, “for example”** and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words **“without limitation”**;
 - 1.3.7 a reference to one gender shall include a reference to the other genders; and
 - 1.3.8 where the context allows, references to Clauses are to clauses in this Contract and references to Sections are the sections of this Contract.
- 1.4 Except as expressly provided elsewhere in this Contract, and subject to Clause 1.5, in the event of and only to the extent of any conflict between each Section of this Contract, the conflict shall be resolved in accordance with the following order of precedence:
- 1.4.1 Section 1 (Form of Contract);
 - 1.4.2 Section 4 (Special Conditions);
 - 1.4.3 Section 3 (Terms of Reference);
 - 1.4.4 Section 2 (Standard Terms and Conditions (except Schedule 4 (Tender)));
 - 1.4.5 Section 5 (Schedule of Prices); and
 - 1.4.6 Schedule 4 (Tender).
- 1.5 Where Schedule 4 (Tender) contain provisions which are more favourable to DFID in relation to (the rest of) this Contract, such provisions of the Tender shall prevail. DFID shall in its absolute and sole discretion determine whether any provision in the Tender is more favourable in this context.
- 1.6 In entering into this Contract DFID is acting as part of the Crown.

2. REPRESENTATIONS AND WARRANTIES

- 2.1 The Supplier represents and warrants that:
- 2.1.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
 - 2.1.2 it has full capacity and authority to enter into and to perform this Contract;
 - 2.1.3 this Contract is executed by its duly authorised representative;

- 2.1.4 it has all necessary consents and regulatory approvals, including in the country of performance, to enter into this Contract;
- 2.1.5 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Contract;
- 2.1.6 its execution, delivery and performance of its obligations under this Contract will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
- 2.1.7 its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
- 2.1.8 all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its response to the standard selection questionnaire and invitation to tender (if applicable), its Tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Contract or to the extent that the Supplier has otherwise disclosed to DFID in writing prior to the date of this Contract;
- 2.1.9 it has notified DFID in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;
- 2.1.10 it has all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-Contractor) to DFID which are necessary for the performance of the Supplier's obligations under this Contract and/or the receipt of the Services by DFID;
- 2.1.11 the Charges set out in Section 5 (Schedule of Prices) is/will be a true and accurate reflection of the costs and the Projected Profit Margin and the Supplier does not have any other internal financial model in relation to the Services inconsistent with the Charges;
- 2.1.12 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Contract;
- 2.1.13 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue
- 2.2 The representations and warranties set out in Clause 2.1 shall be deemed to be repeated by the Supplier on the Commencement Date (if later than the date of signature of this Contract) by reference to the facts then existing.
- 2.3 The representations and warranties set out in this Clause 2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Contract.
- 2.4 If at any time the Supplier becomes aware that a representation or warranty given by it under Clause 2.1 has been breached, is untrue or is misleading, it shall immediately notify DFID of the relevant occurrence in sufficient detail to enable DFID to make an accurate assessment of the situation.
- 2.5 the Supplier System and assets used in the performance of the Services will be:
 - 2.5.1 free of all encumbrances, any exceptions must be agreed in writing with DFID; and
 - 2.5.2 Euro Compliant.
- 2.6 The Supplier shall at all times comply with Law in carrying out its obligations under this Contract.
- 2.7 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination which DFID may have in respect of breach of that provision by the Supplier.
- 2.8 Except as expressly stated in this Contract, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

3. FINANCIAL LIMIT

- 3.1 The components which comprise the Financial Limit are set out in Section 5 (Schedule of Prices). No expenditure may be incurred in excess of the Financial Limit and no variations between components shown in the Section 5 (Schedule of Prices) are permitted without the prior written authority of the DFID Contract Officer.

Term of Contract

4. CONTRACT TERM

- 4.1 The duration of this Contract shall be the Term.
- 4.2 Where DFID has specified an Extension Period in the Section 4 (Special Conditions), DFID may extend this Contract for the Extension Period by providing written notice to the Supplier before the end of the Initial Period. The minimum period for the written notice shall be as specified in Section 4 (Special Conditions).

Provision of Services

5. OBLIGATIONS OF THE SUPPLIER

- 5.1 The Supplier shall perform all its obligations under this Contract with all necessary skill, diligence, efficiency and economy to satisfy generally accepted professional standards expected from experts and in accordance with DFID's Supply Partner Code of Conduct (Appendix B).
- 5.2 If the Supplier is a joint venture or an unincorporated consortium then each of the joint venture or consortium partners shall bear joint and several liability where liability may arise.
- 5.3 In performing its obligations under this Contract, neither the Supplier, nor any of its Affiliates, shall embarrass DFID or otherwise bring DFID into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in DFID, regardless of whether or not such act or omission is related to the Supplier's obligations under this Contract.
- 5.4 The Supplier shall gather, collate, and provide such information and cooperation as DFID may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Contract.
- 5.5 The Supplier shall ensure that the Services:
- 5.5.1 comply in all respects with the description of Services in Section 3 (Terms of Reference) or elsewhere in this Contract; and
 - 5.5.2 are supplied in accordance with the provisions of this Contract and the Tender.
- 5.6 The Supplier shall perform its obligations under this Contract in accordance with:
- 5.6.1 all applicable Law;
 - 5.6.2 Good Industry Practice;
 - 5.6.3 any policies provided by DFID; and
 - 5.6.4 the Supplier's own established procedures and practices to the extent they do not conflict with the requirements of Clauses 5.6.1 to 5.6.3.
- 5.7 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that its Supplier Personnel also do, or refrain from doing, such act or thing.

Supplier Personnel and Supply Chain Matters

6. SUPPLIER PERSONNEL

- 6.1 The Supplier shall not remove or replace any Key Personnel (including when carrying out its obligations under Clause 16 (Exit Management)) unless:
- 6.1.1 requested to do so by DFID;
 - 6.1.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
 - 6.1.3 the person's employment or contractual arrangement with the Supplier or a Sub-Contractor is terminated by the employer for material breach of contract; or
 - 6.1.4 the Supplier obtains Approval (such Approval not to be unreasonably withheld or delayed).
- 6.2 The Supplier shall:
- 6.2.1 provide a list of the names of all Supplier Personnel requiring admission to DFID Sites, specifying the capacity in which they require admission and giving such other particulars as DFID may reasonably require;
 - 6.2.2 ensure that all Supplier Personnel:
 - (a) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
 - (b) are vetted in accordance with Good Industry Practice and in compliance with the Staff Vetting Procedure;
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/301861/Security_Policy_for_Contractors_Consultants_Suppliers.pdf
 - (c) shall be subject to pre-employment checks that include, as a minimum, employment history for the last three years, identity checks, unspent criminal convictions and right to work (including nationality and immigration status);
 - (d) obey all lawful instructions and reasonable directions of DFID (including, if so required by DFID, the ICT Policy) and provide the Services to the reasonable satisfaction of DFID; and
 - (e) comply with:
 - (i) all reasonable requirements of DFID concerning conduct at DFID Sites, including any security requirements; and
 - (ii) any DFID policies, provided to the Supplier or Supplier Personnel from time to time
 - 6.2.3 subject to Schedule 2 (Staff Transfer), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or Contractors of DFID;
 - 6.2.4 be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Contract shall be a Default by the Supplier;
 - 6.2.5 use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
 - 6.2.6 subject to Clause 6.1, replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
 - 6.2.7 bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
 - 6.2.8 procure that the Supplier Personnel shall vacate DFID Sites immediately upon the Expiry Date.
- 6.3 If DFID reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Contract, it may:
- 6.3.1 refuse admission to the relevant person(s) to DFID Sites and/or
 - 6.3.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).
 - 6.3.3 require the Supplier to replace the relevant person(s) without direct or indirect charge to DFID and the Supplier shall fully indemnify and hold DFID harmless against any claims of any kind that may arise with regard to the replacement of such Supplier Personnel.

7. SUB-CONTRACTORS AND EXCLUSIVITY

- 7.1 DFID has consented to the appointment of the Sub-Contractors set out in Section 4 (Special Conditions).
- 7.2 The Supplier shall exercise due skill and care in the selection of any Sub-Contractors to ensure that the Supplier is able to:
- 7.2.1 manage any Sub-Contracts in accordance with Good Industry Practice;
 - 7.2.2 comply with its obligations under this Contract in the provision of the Services; and
 - 7.2.3 assign, novate or otherwise transfer to DFID or any Replacement Supplier any of its rights and/or obligations under each Sub-Contract that relates exclusively to this Contract.
- 7.3 Prior to sub-contacting any of its obligations under this Contract, the Supplier shall both act in accordance with Clause 8 below and notify DFID and provide DFID with:
- 7.3.1 the proposed Sub-Contractor's name, registered office and company registration number;
 - 7.3.2 the scope of any Services to be provided by the proposed Sub-Contractor; and
 - 7.3.3 where the proposed Sub-Contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of DFID that the proposed Sub-Contract has been agreed on "arm's-length" terms.
- 7.4 If requested by DFID within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 7.3, the Supplier shall also provide:
- 7.4.1 a copy of the proposed Sub-Contract; and
 - 7.4.2 any further information reasonably requested by DFID.
- 7.5 DFID may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 7.3 (or, if later, receipt of any further information requested pursuant to Clause 7.4), object to the appointment of the relevant Sub-Contractor if they consider that:
- 7.5.1 the appointment of a proposed Sub-Contractor may prejudice the provision of the Services or may be contrary to the interests of DFID under this Contract;
 - 7.5.2 the proposed Sub-Contractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
 - 7.5.3 the proposed Sub-Contractor employs unfit persons,
- in which case, the Supplier shall not proceed with the proposed appointment.
- 7.6 If DFID has not notified the Supplier that it objects to the proposed Sub-Contractor's appointment by the later of ten (10) Working Days of receipt of:
- 7.6.1 the Supplier's notice issued pursuant to Clause 7.3; or
 - 7.6.2 any further information requested by DFID pursuant to Clause 7.4,
- the Supplier may proceed with the proposed appointment.
- 7.7 The Supplier shall ensure that all Sub-Contracts contain provisions:
- 7.7.1 requiring the Sub-Contractor to comply with the DFID's Supply Partner Code of Conduct (Appendix B) at all times;
 - 7.7.2 requiring the Supplier to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice;

- 7.7.3 requiring that any invoices submitted by a Sub-Contractor shall be considered and verified by the Supplier in a timely fashion and that undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed;
- 7.7.4 conferring a right to DFID to publish the Supplier's compliance with its obligation to pay undisputed invoices to the Sub-Contractor within the specified payment period;
- 7.7.5 giving the Supplier a right to terminate the Sub-Contract if the Sub-Contractor fails to comply in the performance of the Sub-Contract with legal obligations in the fields of environmental, social or labour law; and
- 7.7.6 requiring the Sub-Contractor to include in any Sub-Contract which it in turn awards suitable provisions to impose, as between the parties to that Sub-Contract, requirements to the same effect as those required by this Clause 7.7.

7.8 The Supplier shall:

- 7.8.1 pay any undisputed sums which are due from it to a Sub-Contractor within thirty (30) days from the receipt of a valid invoice;
- 7.8.2 include within the Performance Monitoring Reports required under Clause 13.3 a summary of its compliance with this Clause 7.8.1, such data to be certified each quarter by a director of the Supplier as being accurate and not misleading;
- 7.8.3 not include in any Sub-Contract any provision the effect of which would be to limit or restrict the ability of the Sub-Contractor to contract directly with DFID, a Replacement Supplier, or with any other organisation and Sub-Contractors shall be free to assert their rights independently regarding contractual exclusivity.
- 7.8.4 where Sub-Contracting has been Approved by DFID, promptly provide DFID with written confirmation from each Sub-Contractor identified within Section 4 of the Contract that they accept provisions set out at Clauses 50.1 to 50.7, which shall be included in all Supplier Sub-Contracts.

8. VISIBILITY OF SUBCONTRACT OPPORTUNITIES

8.1 The Supplier shall:

- 8.1.1 subject to Clause 8.3, advertise on Contracts Finder all subcontract opportunities arising from or in connection with the provision of the Goods and/or Services and/or Works above a minimum threshold of £25,000 that arise during the Term;
- 8.1.2 within 90 days of awarding a Sub-Contract to a Sub-Contractor, update the notice on Contracts Finder with details of the successful Sub-Contractor;
- 8.1.3 monitor the number, type and value of the Sub-Contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;
- 8.1.4 provide reports on the information at clause 8.1.3 to DFID in the format and frequency as reasonably specified by DFID; and
- 8.1.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.

8.2 Each advert referred to at Clause 8.1 above shall provide a full and detailed description of the Sub-Contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.

8.3 The obligation at Clause 8.1 shall only apply in respect of Sub-Contract opportunities arising after the Commencement Date.

8.4 Notwithstanding Clause 8.1, DFID may by giving its Approval, agree that a Sub-Contract opportunity is not required to be advertised on Contracts Finder.

9. STAFF TRANSFER

9.1 The Parties agree that:

- 9.1.1 where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 2 (Staff Transfer) shall apply as follows:
 - (a) where the Relevant Transfer involves the transfer of Transferring DFID Employees, Part A of Schedule 2 (Staff Transfer) shall apply;

- (b) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B of Schedule 2 (Staff Transfer) shall apply;
- (c) where the Relevant Transfer involves the transfer of Transferring DFID Employees and Transferring Former Supplier Employees, Parts A and B of Schedule 2 (Staff Transfer) shall apply; and
- (d) Part C of Schedule 2 (Staff Transfer) shall not apply.

9.1.2 where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Schedule 2 (Staff Transfer) shall apply and Parts A and B of Schedule 2 (Staff Transfer) shall not apply; and

9.1.3 Part D of Schedule 2 (Staff Transfer) shall apply on the expiry or termination of the Services or any part of the Services;

9.2 The Supplier shall both during and after the Term indemnify DFID against all Employee Liabilities that may arise as a result of any claims brought against DFID by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel.

10. DUTY OF CARE

10.1 The Supplier owes a duty of care to the Supplier Personnel and is responsible for the health, safety, security of life and property and general wellbeing of such persons and their property and this includes where the Supplier Personnel carry out the Services.

10.2 The Supplier warrants that it has and will throughout the duration of the Contract:

10.2.1 carry out the appropriate risk assessment with regard to its delivery of the Services;

10.2.2 provide the Supplier Personnel with adequate information, instruction, training and supervision;

10.2.3 have appropriate emergency procedures in place to enable their provision of the Services so as to prevent damage to the Supplier Personnel's health, safety, security of life and property and general wellbeing.

10.3 The provision of information of any kind whatsoever by DFID to the Supplier shall not in any respect relieve the Supplier from responsibility for its obligations under this Clause 10. The positive evaluation of the Supplier's proposal for the provision of the Services and the award of this Contract is not an endorsement by DFID of any arrangements which the Supplier has made for the health, safety, security of life and property and wellbeing of the Supplier Personnel in relation to the provision of the Services.

10.4 The Supplier acknowledges that the DFID accepts no responsibility for the health, safety, security of life and property and general wellbeing of the Supplier Personnel with regard to the Supplier Personnel carrying out the Services under this Contract.

10.5 The Supplier will ensure that such insurance arrangements as are made to cover the Supplier Personnel, or any person employed or otherwise engaged by the Supplier, and pursuant to the Suppliers duty of care as referred to in this Clause 10, are reasonable and prudent in all circumstances, including in respect of death, injury or disablement, and emergency medical expenses.

10.6 The costs of any insurance specifically taken out by the Supplier to support the performance of this Contract in relation to the Supplier's duty of care may be included as part of the management costs of the project, and must be separately identified in all financial reporting relating to the project.

10.7 Where DFID is providing any specific security arrangements for the Supplier or Supplier Personnel in relation to the Contract, these will be as detailed in the Section 3 (Terms of Reference).

10.8 The Supplier shall provide training on a continuing basis for all Supplier Personnel, in compliance with the Security Policy and the security plan.

11. PROCUREMENT OF EQUIPMENT

11.1 The Supplier shall ensure that procurement of goods and equipment shall:

11.1.1 be undertaken in accordance with best practice principles of openness fairness and transparency;

11.1.2 achieve "Value for Money" defined as the optimum combination of whole-life cost and quality to meet requirements in a fully transparent manner and the procurement may be subject to audit by DFID;

11.1.3 be carried out using strict due diligence processes that ensure the protection of DFID's interests and reputation, with particular emphasis on anti-terrorism, anti-corruption and fraud throughout the delivery chain; and

11.1.4 be on the basis that the ownership of Equipment shall vest in DFID, and shall be so marked.

12. USE OF AND RESPONSIBILITY FOR EQUIPMENT

- 12.1 Equipment may only be used in providing the Services and shall be safely kept and maintained. Personal use of Equipment by the Supplier is not permitted without Approval.
- 12.2 The Supplier shall keep an up to date inventory of the Equipment, its condition and location, and make such inventory available to DFID immediately on request.
- 12.3 Subject to Clause 12.4 the Supplier shall be responsible for all loss or damage to Equipment other than that caused by fair wear and tear. The Supplier shall notify DFID immediately the Supplier becomes aware of any loss of or damage to Equipment
- 12.4 Except as required by law or circumstance, the Supplier shall not insure Equipment. DFID shall bear the risk in respect of loss or damage provided such loss or damage was not due to the Supplier's negligence and provided the Supplier obtains and pays to DFID such proper compensation as may be due from any third party in respect of such loss or damage to the Equipment.
- 12.5 The Supplier shall obtain DFID's instructions on the disposal of Equipment and comply with such instructions.

Contract Governance

13. MONITORING OF CONTRACT PERFORMANCE

- 13.1 Unless Section 4 (Special Conditions) specifies that obligations relating to the monitoring of Contract performance shall be those set out in Section 3 (Terms of Reference), the remaining provisions of this Clause 13 shall apply.
- 13.2 Within twenty (20) Working Days of the Commencement Date the Supplier shall provide DFID with details of how the process in respect of the monitoring and reporting of the performance of the Supplier's obligations under this Contract will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.
- 13.3 The Supplier shall provide DFID with performance monitoring reports ("**Performance Monitoring Reports**") in accordance with the process and timescales agreed pursuant to Clause 13.2 above which shall contain, as a minimum, the following information:
- 13.3.1 details of compliance with its obligations under Clause 7.8.2
 - 13.3.2 details of compliance with any additional obligations set out in Section 3 (Terms of Reference);
 - 13.3.3 details of compliance with its obligations under Annex 1b of Section 2 (Contractual Annual Compliance Declaration); and
 - 13.3.4 such other details as DFID may reasonably require from time to time.
- 13.4 The Parties shall attend meetings to discuss Performance Monitoring Reports ("**Performance Review Meetings**") on a monthly basis (unless otherwise agreed). The Performance Review Meetings will be the forum for the review by the Supplier and DFID of the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):
- 13.4.1 take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier;
 - 13.4.2 take place at such location and time (within normal business hours) as DFID shall reasonably require unless otherwise agreed in advance;
 - 13.4.3 be attended by the Supplier's Contract Officer and the DFID's Project Officer; and
 - 13.4.4 be fully minuted by the Supplier. The prepared minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the DFID Project Officer and any other recipients agreed at the relevant meeting. The minutes of the preceding month's Performance Review Meeting will be agreed and signed by both the Supplier's Contract Officer and the DFID's Project Officer at each meeting.
- 13.5 In order to assess the level of performance of the Supplier, DFID may undertake satisfaction surveys in respect of the Supplier's provision of the Services and DFID shall be entitled to notify the Supplier of any aspects of their performance of the provision of the Services which the responses to the satisfaction surveys reasonably suggest are not in accordance with this Contract.
- ### **14. PROGRESS & FINANCIAL REPORTS**
- 14.1 Where progress and financial reports are to be submitted under the Contract, the Supplier shall render those reports at such time and in such form as may be specified by DFID or where not specified by DFID, as otherwise agreed between the Parties.

15. OPEN BOOK ACCOUNTING AND AUDIT

- 15.1 The Supplier shall keep and maintain for seven (7) years after the expiry of the Term (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Contract including the Services provided under it, any Sub-Contracts and the amounts paid by DFID.
- 15.2 If so stated in Section 3 (Terms of Reference), DFID shall be entitled to apply the principles of open book contract management set out in Procurement Policy Note 05/16 (<https://www.gov.uk/government/publications/procurement-policy-note-0516-open-book-contact-management>), or any other replacement guidance or policy issued from time to time to this Contract. DFID shall apply the appropriate tier level which, in DFID's reasonable opinion, is commensurate with the delivery model of the Services and the Supplier shall comply with the principles etc. (as more particular described in the OBMC guidance).
- 15.3 The Supplier shall:
- 15.3.1 keep the records and accounts referred to in Clause 15.1 in accordance with Good Industry Practice and Law; and
- 15.3.2 afford DFID and/or its Auditors access to the records and accounts referred to in Clause 15.1 at the Supplier's premises and/or provide records and accounts (including copies of the Supplier's published accounts) or copies of the same, as may be required by any of the Auditors from time to time during the Term and the period specified in Clause 15.1, in order that the Auditor(s) may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier's obligations under this Contract including in order to:
- (a) verify the accuracy of the Charges and any other amounts payable by DFID under this Contract (and proposed or actual variations to them in accordance with this Contract);
 - (b) verify the costs of the Supplier (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Services;
 - (c) verify the Open Book Data;
 - (d) verify the Supplier's and each Sub-Contractor's compliance with the applicable Law;
 - (e) identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances DFID shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
 - (f) identify or investigate any circumstances which may impact upon the financial stability of the Supplier and/or any Sub-Contractors or their ability to perform the Services;
 - (g) obtain such information as is necessary to fulfil DFID's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
 - (h) review any books of account and the internal contract management accounts kept by the Supplier in connection with this Contract;
 - (i) carry out DFID's internal and statutory audits and to prepare, examine and/or certify DFID's annual and interim reports and accounts;
 - (j) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which DFID has used its resources;
 - (k) review any records relating to the Supplier's performance of the provision of the Services and to verify that these reflect the Supplier's own internal reports and records;
 - (l) verify the accuracy and completeness of any information delivered or required by this Contract;
 - (m) review the Supplier's quality management systems (including any quality manuals and procedures);
 - (n) review the Supplier's compliance with any standards referred to in this Contract or applicable to the provision of the Services;

- (o) inspect any of DFID's assets, including DFID's IPRs, equipment and facilities, for the purposes of ensuring that any of DFID's assets are secure and that any register of assets is up to date; and/or
 - (p) review the integrity, confidentiality and security of DFID Data.
- 15.4 DFID shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor(s) is outside of the control of DFID.
- 15.5 Subject to the Supplier's rights in respect of Confidential Information, the Supplier shall on demand provide the Auditor(s) with all reasonable co-operation and assistance in:
 - 15.5.1 all reasonable information requested by DFID within the scope of the audit;
 - 15.5.2 reasonable access to sites controlled by the Supplier and to any Supplier Equipment used in the provision of the Services; and
 - 15.5.3 access to the Supplier Personnel.
- 15.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 15, unless the audit reveals a Default by the Supplier in which case the Supplier shall reimburse DFID for the DFID's reasonable costs incurred in relation to the audit.
- 16. EXIT MANAGEMENT**
- 16.1 On reasonable notice at any point during the Term, the Supplier shall provide to DFID and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by DFID of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:
 - 16.1.1 details of the Service(s);
 - 16.1.2 a copy of the Register, updated by the Supplier up to the date of delivery of such Registers;
 - 16.1.3 an inventory of DFID Data in the Supplier's possession or control;
 - 16.1.4 details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
 - 16.1.5 a list of on-going and/or threatened disputes in relation to the provision of the Services;
 - 16.1.6 all information relating to Transferring Supplier Employees or those who may be Transferring Supplier Employees required to be provided by the Supplier under this Contract such information to include the Staffing Information as defined in Schedule 2 (Staff Transfer); and
 - 16.1.7 such other material and information as DFID shall reasonably require,

(together, the "Exit Information").
- 16.2 The Supplier acknowledges that DFID may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom DFID is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that DFID may not disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-Contractors' prices or costs).
- 16.3 if the Exit Information materially changes from the Exit Information previously provided and it could reasonably adversely affect:
 - 16.3.1 the provision of the Services; and/or
 - 16.3.2 the delivery of the exit services/exit plan; and/or
 - 16.3.3 any re-tender exercise by DfID,

then the Supplier shall notify DfID within a reasonable period of time and consult and shall consult with DFID regarding such proposed material changes and provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from DFID.
- 16.4 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:

- 16.4.1 prepare an informed offer for those Services; and
- 16.4.2 not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).
- 16.5 The Supplier shall, within three (3) months after the Commencement Date, deliver to DFID an Exit Plan which:
 - 16.5.1 sets out the Supplier's proposed methodology for achieving an orderly transition of the Services from the Supplier to DFID and/or its Replacement Supplier on the expiry or termination of this Contract;
 - 16.5.2 complies with the requirements set out in Clause 16.7 below;
 - 16.5.3 is otherwise reasonably satisfactory to DFID.
- 16.6 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 16.7 Unless otherwise specified by DFID, the Exit Plan shall set out, as a minimum:
 - 16.7.1 how the Exit Information is obtained;
 - 16.7.2 the management structure to be employed during both transfer and cessation of the Services;
 - 16.7.3 the management structure to be employed whilst carrying out the activities to be performed by the Supplier as identified in the Exit Plan;
 - 16.7.4 a detailed description of both the transfer and cessation processes, including a timetable;
 - 16.7.5 how the Services will transfer to the Replacement Supplier and/or DFID, including details of the processes, documentation, data transfer, systems migration, security and the segregation of DFID's technology components from any technology components operated by the Supplier or its Sub-Contractors (where applicable);
 - 16.7.6 details of contracts (if any) which will be available for transfer to DFID and/or the Replacement Supplier upon the Expiry Date together with any reasonable costs required to effect such transfer (and the Supplier agrees that all assets and contracts used by the Supplier in connection with the provision of the Services will be available for such transfer);
 - 16.7.7 proposals for the training of key personnel of the Replacement Supplier in connection with the continuation of the provision of the Services following the Expiry Date charged at rates agreed between the Parties at that time;
 - 16.7.8 proposals for providing DFID or a Replacement Supplier copies of all documentation:
 - (a) used in the provision of the Services and necessarily required for the continued use of the Replacement Services, in which the Intellectual Property Rights are owned by the Supplier; and
 - (b) relating to the use and operation of the Services;
 - 16.7.9 proposals for the assignment or novation of the provision of all services, leases, maintenance agreements and support agreements utilised by the Supplier in connection with the performance of the supply of the Services;
 - 16.7.10 proposals for the identification and return of all Equipment in the possession of and/or control of the Supplier or any third party (including any Sub-Contractor);
 - 16.7.11 proposals for the disposal of any redundant Services and materials;
 - 16.7.12 procedures to:
 - (a) deal with requests made by DFID and/or a Replacement Supplier for Staffing Information pursuant to Schedule 2 (Staff Transfer);
 - (b) determine which Supplier Personnel are or are likely to become Transferring Supplier Employees; and
 - (c) identify or develop any measures for the purpose of the Employment Regulations envisaged in respect of Transferring Supplier Employees;

- 16.7.13 how each of the issues set out in this Clause 16 will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or DFID with the aim of ensuring that there is no disruption to or degradation of the Services;
- 16.7.14 proposals for the supply of any other information or assistance reasonably required by DFID or a Replacement Supplier in order to effect an orderly handover of the provision of the Services.

PAYMENT AND TAXATION

17. Charges

- 17.1 In consideration of the Supplier carrying out its obligations under this Contract, including the provision of the Services, DFID shall pay the undisputed Charges in accordance with the pricing and payment profile set out in Section 5 (Schedule of Prices) and the invoicing procedure set out in Clause 22.
- 17.2 If DFID fails to pay any undisputed Charges properly invoiced under this Contract, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

18. VAT

- 18.1 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by DFID following delivery of a Valid Invoice.
- 18.2 The Supplier shall indemnify DFID on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on DFID at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Contract. Any amounts due shall be paid in cleared funds by the Supplier to DFID not less than five (5) Working Days before the date upon which the tax or other liability is payable by DFID.

19. RETENTION AND SET OFF

- 19.1 DFID may retain or set off any amount owed to it by the Supplier against any amount due to the Supplier under this Contract or under any other agreement between the Supplier and DFID.
- 19.2 If DFID wishes to exercise its right pursuant to Clause 19.1 it shall give at least 21 days' notice of its intention to do so, setting out the reasons for retaining or setting off the relevant Charges.
- 19.3 The Supplier shall make any payments due to DFID without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has obtained a sealed court order requiring an amount equal to such deduction to be paid by DFID to the Supplier

20. SUPPLIER PROFIT

- 20.1 On completion of each Contract Year (or on a six-monthly basis if requested by DFID giving reasonable written notice), and for any Variation, the Supplier is required to send a written report (the "**Actual Profit Margin Report**") in an overall format determined by DFID but to include an updated cost pro-forma template, setting out the Actual Profit Margin including any change to the Projected Profit Margin.
- 20.2 Where the Actual Profit Margin Report identifies that the Supplier has exceeded the Projected Profit Margin over the period set out in the Actual Profit Margin Report ("the **Exceeded Amount**"), the Parties shall agree within a reasonable period of time following receipt by DFID of the Actual Profit Margin Report how the Exceeded Amount should be apportioned. Where the Parties are unable to agree DFID shall be entitled to require the Supplier to do any of the following:
- 20.2.1 pay DFID an amount equal to the difference between the Projected Profit Margin and the Exceeded Amount; or
- 20.2.2 redirect an amount equal to the difference between the Projected Profit Margin and the Exceeded Amount back in to the programme being delivered as part of the Services; or
- 20.2.3 adjust the Charges.

21. SATISFACTORY PERFORMANCE

- 21.1 Payments made pursuant to Clause 17.1 are subject to the satisfactory performance by the Supplier of its obligations under the Contract as determined by the DFID Project Officer in addition to verification by the DFID Project Officer that all prior payments made to the Supplier under this Contract were properly due.
- 21.2 If for any reason the Services are not provided in accordance with this Contract, or DFID is dissatisfied with the performance of this Contract, DFID, without prejudice to any other rights or remedies howsoever arising, shall be entitled to withhold payment of the applicable Charges for the Services that were not so provided until such time as the applicable Services are provided in accordance with this Contract.
- 21.3 Should DFID determine after paying for a particular part of the Services that this has not been provided in accordance with this Contract, DFID may recover, or withhold from further payments, an amount not exceeding the applicable Charges paid for that part of the Service until the unsatisfactory part of the Services is remedied to DFID's satisfaction.

22. PAYMENTS & INVOICING INSTRUCTIONS

- 22.1 Subject to DFID being satisfied that the Supplier is or has been carrying out their duties, obligations and responsibilities under this Contract, the applicable Charges shall be paid within 30 days of receipt of an undisputed Valid Invoice and payment shall be made in sterling in the UK or any other currency in any other country as determined from DFID from time to time.
- 22.2 Expenses (if any) arising in foreign currency shall be reimbursed at the exchange rate stated in OANDA (www.oanda.com) on the Friday immediately preceding the date on which the purchase was made or services acquired by the Supplier or, if this took place on a Friday, at the rate so stated on that day.
- 22.3 Unless otherwise expressly provided in Section 4 (Special Conditions) or Section 5 (Schedule of Prices), invoices should be submitted electronically monthly in arrears to the Accounts Payable Section, DFID Financial Management Group efinvoicing@dfid.gov.uk, and in accordance with this Clause 22.
- 22.4 DFID shall unless otherwise expressly provided in Section 4 (Special Conditions) make payments due by direct credit through the UK Bank Clearing Systems (BACS). For an invoice to be valid, it must contain:
- 22.4.1 details of the bank account to which payments are to be made (i.e. name and address of bank, sort code, account name and number).
 - 22.4.2 the date of the invoice;
 - 22.4.3 a unique invoice number;
 - 22.4.4 the period(s) to which the relevant charge(s) relate;
 - 22.4.5 the correct reference for this Agreement and the purchase order to which it relates;
 - 22.4.6 a contact name and telephone number of a responsible person in the supplier's finance department;
 - 22.4.7 a detailed breakdown of the Services and the appropriate Charges and supported by any other documentation required by DFID to substantiate the invoice.
- 22.5 All Valid Invoices should correspond with the budget lines identified in Section 5 (Schedule of Prices) of this Contract.
- 22.6 DFID may request proof of purchase in respect of any item and shall be entitled to refuse to meet a claim if this cannot be provided.
- 22.7 Where an invoice is not a Valid Invoice it may be rejected by DFID and in any event shall be liable to query and delay in payment. DFID reserves the right to not pay any amount due in respect of any invoice received by DFID more than 90 days after the day of the Supplier becoming entitled to invoice for the payment to which it relates.
- ## **23. UNITED KINGDOM INCOME TAX AND NATIONAL INSURANCE CONTRIBUTIONS**
- 23.1 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Contract, the Supplier shall:
- 23.1.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration;

- 23.1.2 indemnify DFID against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Supplier or any Supplier Personnel.

24. TAX COMPLIANCE

24.1 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:

24.1.1 notify DFID in writing of such fact within 5 Working Days of its occurrence;

24.1.2 promptly provide to DFID:

- (a) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
- (b) such other information in relation to the Occasion of Tax Non-Compliance as DFID may reasonably require.

Intellectual Property, Security and Information

25. INTELLECTUAL PROPERTY RIGHTS

25.1 Save as expressly granted elsewhere under this Contract:

25.1.1 DFID shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:

- (a) the Supplier Background IPR; and
- (b) the Third Party IPR.

25.1.2 the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of DFID or its licensors, including the:

- (a) DFID Background IPR;
- (b) DFID Data;
- (c) Project Specific IPRs; and
- (d) Programme Name and any rights and interests in it at all times.

25.2 Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 25.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

25.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

25.4 Any Project Specific IPRs created under this Contract shall be owned by DFID. DFID grants the Supplier a licence to use any DFID Background IPR and Project Specific IPRs for the purpose of fulfilling its obligations under this Contract during its Term.

25.5 Subject to Clause 25.7, to the extent that it is necessary to enable DFID to obtain the full benefits of ownership of the Project Specific IPRs, the Supplier hereby grants to DFID and shall procure that any relevant third party licensor shall grant to DFID a perpetual, irrevocable, non-exclusive, assignable, royalty-free licence to use, sub-license and/or commercially exploit any Supplier Background IPRs or Third Party IPRs that are embedded in or which are an integral part of the Project Specific IPR Items.

25.6 The Supplier shall promptly notify DFID if it is reasonably believes that it will be unable to grant or procure the grant of the licences set out in Clause 25.5 above and the Supplier shall provide full details of the adverse effect this may have on DFID's use of the Project Specific IPRs.

25.7 Where the Supplier is unable to comply with Clause 25.5, the Supplier shall refrain from embedding or integrating any Supplier Background IPRs and/or Third Party IPRs with the Project Specific IPRs in such a way that could affect DFID obtaining full benefit of the ownership of those Project Specific IPRs, except where DFID has provided express written Approval to do so.

- 25.8 The Supplier shall, during and after the Term, on written demand, indemnify DFID against all Losses incurred by, awarded against, or agreed to be paid by DFID (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.
- 25.9 If an IPR Claim is made or anticipated, the Supplier must at its own expense and DFID's sole option, either:
- 25.9.1 procure for DFID the rights in Clause 25.5 without infringing the IPR of any third party; or
- 25.9.2 replace or modify the relevant item with non-infringing substitutes with no detriment to functionality of performance of the Services.
- 26. SECURITY REQUIREMENTS**
- 26.1 The Supplier shall comply, and shall procure that the Supplier Personnel comply, with the Security Policy and any security plan requested by DFID, and the Supplier shall ensure that the security plan produced by the Supplier fully complies with the Security Policy.
- 26.2 The Supplier shall ensure that it keeps up to date with the latest version of the Security Policy.
- 26.3 If the Supplier believes that a change to the Security Policy will have a material and unavoidable cost implication to the Services it may submit a variation in accordance with Clause 38. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in discussion with the DFID Contract Officer.
- 26.4 Until and/or unless a change to the Charges is agreed by DFID pursuant to Clause 26.3 the Supplier shall continue to perform the Services in accordance with its obligations and for the Charges applicable prior to any change request.
- 27. MALICIOUS SOFTWARE**
- 27.1 The Supplier shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.
- 27.2 Notwithstanding Clause 27.1 if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of DFID Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.
- 27.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 27.2 shall be borne by the Parties as follows:
- 27.3.1 by the Supplier where the Malicious Software originates from the Supplier Software, the Third Party Software or the DFID Data (whilst the DFID Data was under the control of the Supplier); and
- 27.3.2 by DFID if the Malicious Software originates from the DFID Software or the DFID Data (whilst DFID Data was under the control of DFID).
- 28. TRANSPARENCY**
- 28.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of Clause 30 (Freedom of Information), the content of this Contract is not confidential information. DFID shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- 28.2 Notwithstanding any other term of this Contract, the Supplier hereby gives their consent for DFID to publish the Contract in its entirety, including from time to time agreed changes to the Contract, to the general public.
- 28.3 DFID may consult with the supplier to inform its decision regarding any exemptions with regard to FOIA but DFID shall have the final decision in its absolute discretion.
- 28.4 The Supplier shall assist and cooperate with DFID to enable DFID to publish this Contract.
- 28.5 The Supplier acknowledges that DFID endorses/supports the requirements of the IATI standard and shall assist and cooperate with DFID, to enable the Supplier to understand the different elements of IATI implementation and to comply with the different data, policy and technical considerations that need to be taken into account.
- 28.6 The Supplier shall:

- 28.6.1 publish information data to the IATI standard, that relates to a specific activity in a single, common, electronic format for the transparent, accurate, timely and comprehensive publishing of data, on all activities in the delivery chain, in the delivery of development cooperation and humanitarian aid; and
 - 28.6.2 provide all necessary assistance as reasonably requested by DFID to enable DFID to respond to the IATI requirements.
- 28.7 The Supplier shall maintain an up-to-date and accurate record of named downstream delivery partners in receipt of DFID funds and/or DFID funded inventory or assets. This record should demonstrate how funds flow from initial source to end beneficiaries. This record should be made available to DFID upon written request and within the time set out in the request. This record should be updated by the Supplier;
- 28.7.1 as required in the terms of reference;
 - 28.7.2 annually;
 - 28.7.3 when there are material changes in the delivery chain; and
 - 28.7.4 as part of the project completion process.
- 29. CONFIDENTIALITY**
- 29.1 Except to the extent set out in this Clause 29 or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
- 29.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly;
 - 29.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 29.2 Clause 29.1 shall not apply to the extent that:
- 29.2.1 such disclosure is a requirement of Law applicable to the Party making the disclosure, including any requirements for disclosure under the FOIA, the Environmental Information Regulations and associated codes of practice pursuant to Clause 30 (Freedom of Information);
 - 29.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 29.2.3 such information was obtained from a third party without obligation of confidentiality;
 - 29.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
 - 29.2.5 it is independently developed without access to the other Party's Confidential Information.
- 29.3 The Supplier may only disclose DFID's Confidential Information to the Supplier Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Supplier Personnel are aware of and shall comply with these obligations as to confidentiality.
- 29.4 The Supplier shall not, and shall procure that the Supplier Personnel do not, use any of DFID's Confidential Information received otherwise than for the purposes of this Contract.
- 29.5 At the written request of DFID, the Supplier shall procure that those members of the Supplier Personnel referred to in Clause 29.3, respectively sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 29.6 Nothing in this Contract shall prevent DFID from disclosing the Supplier's Confidential Information:
- 29.6.1 on a confidential basis to any Central Government Body for any proper purpose of DFID or of the relevant Central Government Body;
 - 29.6.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - 29.6.3 to the extent that DFID (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

- 29.6.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 29.6.1 (including any benchmarking organisation) for any purpose relating to or connected with this Contract;
- 29.6.5 on a confidential basis for the purpose of the exercise of its rights under this Contract, including the Audit Rights, its step-in rights pursuant to Clause 15 (Open Book Accounting and Audit), its rights to appoint an advisor pursuant to Clause 47 (Dispute Resolution) and any rights set out in Clause 16 (Exit Management);
- 29.6.6 on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract; or
- 29.6.7 for the purpose of the examination and certification of DFID's accounts,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on DFID under this Clause 29.

- 29.7 Nothing in this Clause 29 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.

30. FREEDOM OF INFORMATION

- 30.1 The Supplier acknowledges that DFID is subject to the requirements of the FOIA, the Environmental Information Regulations and associated codes of practice and shall assist and cooperate with DFID to enable DFID to comply with its Information disclosure obligations.
- 30.2 The Supplier shall and shall ensure that its Sub-Contractors shall:
 - 30.2.1 transfer to DFID all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
 - 30.2.2 provide DFID with a copy of all Information in its possession, or power in the form that DFID requires within five (5) Working Days (or such other period as DFID may specify) of DFID's request; and
 - 30.2.3 provide all necessary assistance as reasonably requested by DFID to enable DFID to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 30.3 DFID shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA, the Environmental Information Regulations and associated codes of practice.
- 30.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by DFID.
- 30.5 The Supplier acknowledges that DFID may, acting in accordance with any code of practice issued pursuant to Section 45 of FOIA ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier or the Services:
 - 30.5.1 in certain circumstances without consulting the Supplier;
 - 30.5.2 following consultation with the Supplier and having taken their views into account;
 - 30.5.3 provided always that where Clause 30.5.1 applies DFID shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 30.6 The Supplier shall ensure that all Information is retained for disclosure in accordance with Clauses 30.7 and 30.8 and shall permit DFID to inspect such records as requested by DFID from time to time.
- 30.7 The Supplier shall, during this Contract and for a period of at least seven years following the expiry or termination of this Contract, retain and maintain all Information:
 - 30.7.1 in accordance with Good Industry Practice and Law;

- 30.7.2 in chronological order;
- 30.7.3 in a form that is capable of audit;
- 30.7.4 at its own expense.

30.8 Wherever practical, original Information shall be retained and maintained in hard copy form.

31. OFFICIAL SECRETS ACT

31.1 The Supplier shall, and shall ensure that the Supplier Personnel shall, comply with any relevant obligations arising under the Official Secrets Acts 1911 to 1989.

32. DFID DATA

- 32.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to DFID Data.
- 32.2 The Supplier shall not store, copy, disclose, or use DFID Data except as necessary for the performance by the Supplier of its obligations under this Contract or as otherwise expressly authorised in writing by DFID.
- 32.3 To the extent that DFID Data is held and/or processed by the Supplier, the Supplier shall supply that DFID Data to DFID as requested by DFID in the format(s) specified by DFID.
- 32.4 Upon receipt or creation by the Supplier of any DFID Data and during any collection, processing, storage and transmission by the Supplier of any DFID Data, the Supplier shall take responsibility for preserving the integrity of DFID Data and preventing the corruption or loss of DFID Data.
- 32.5 The Supplier shall perform secure back-ups of all DFID Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Security Policy. The Supplier shall ensure that such back-ups are available to DFID at all times upon request, with delivery times as specified by DFID.
- 32.6 The Supplier shall ensure that the system on which the Supplier holds any DFID Data, including back-up data, is a secure system that complies with the Security Policy.
- 32.7 If DFID Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, DFID may:
 - 32.7.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of DFID Data to the extent and in accordance with the Business Continuity and Disaster Recovery Provisions specified in the Security Policy and the Supplier shall do so as soon as practicable but not later than three days following a written request from DFID; and/or
 - 32.7.2 itself restore or procure the restoration of DFID Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in the Business Continuity and Disaster Recovery provisions specified in the Security Policy.
- 32.8 If at any time the Supplier suspects or has reason to believe that DFID Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify DFID immediately and inform DFID of the remedial action the Supplier proposes to take.
- 32.9 The Supplier shall obtain and maintain certification under the HM Government Cyber Essentials Scheme.

33. PROTECTION OF PERSONAL DATA

- 33.1 The Parties acknowledge that the factual activity carried out by each of them in relation to their obligations under this Contract will determine the status of each Party under the Data Protection Legislation. A Party may act as "Joint Controller" or a "Controller" or a "Processor" of certain Personal Data under this Contract. The Parties shall detail the envisaged status in Appendix A of the Terms of Reference (at Section 3 of the Contract) and update it where appropriate.
- 33.2 **Where a Party is Processing on behalf of the other Party who is the Controller**
 - 33.2.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, DFID is the Controller and the Supplier is the Processor unless otherwise specified in Appendix A of the Terms of Reference (at Section 3 of the contract). The only processing that the Processor is authorised to do is listed in Appendix A of the Terms of Reference by the Controller and may not be determined by the Processor.
 - 33.2.2 The Processor shall notify the Controller immediately if it considers that any of Controller's instructions infringe the Data Protection Legislation.

- 33.2.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the services.
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 33.2.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- (a) process that Personal Data only in accordance with the Appendix A referred to in Clause 33.2.1, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
 - a. nature of the data to be protected;
 - b. harm that might result from a Data Loss Event;
 - c. state of technological development; and
 - d. cost of implementing any measures;
 - (c) ensure that:
 - I. the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Appendix A referred to in Clause 33.2.1);
 - II. it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - a. are aware of and comply with the Processor's duties under this clause;
 - b. are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - c. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
 - d. have undergone adequate training in the use, care, protection and handling of Personal Data; and
 - (d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - a. the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
 - b. the Data Subject has enforceable rights and effective legal remedies;
 - c. the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - d. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;

- (e) At the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

33.2.5 Subject to clause 33.2.6, the Processor shall notify the Controller without due delay and in any event within 48 hours if it:

- a. receives a Data Subject Access Request (or purported Data Subject Access Request);
- b. receives a request to rectify, block or erase any Personal Data;
- c. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- d. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- e. receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- f. becomes aware of a Data Loss Event.

33.2.6 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 33.2.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

- a. the Controller with full details and copies of the complaint, communication or request;
- b. such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- c. the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
- d. assistance as requested by the Controller following any Data Loss Event;
- e. assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.

33.2.7 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:

- a. the Controller determines that the processing is not occasional;
- b. the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- c. the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

33.2.8 Where the Supplier is the Processor it shall allow for audits of its Data Processing activity by the DFID or its DFID's designated auditor.

33.2.9 Each party shall designate its own Data Protection Officer if required by the Data Protection Legislation.

33.2.10 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:

- a. notify the Controller in writing of the intended Sub-processor and processing;
- b. obtain the written consent of the Controller;
- c. enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 33.2 such that they apply to the Sub-processor; and

- d. provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.

33.2.11 The Processor shall remain fully liable for all acts or omissions of any Sub-processor.

33.2.12 The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable Controller to Processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

33.2.13 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. DFID may on not less than 30 Working Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

33.3 Where the Parties both Control Personal Data Independently

33.3.1 With respect to Personal Data which a Party acts as Controller but which is not under the Joint Control (because the Parties determine the means and purposes of processing Personal Data independently of each other) each Party undertakes to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Controller and with this Clause 33.3.

33.3.2 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its processing of Personal Data as independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 33(1)(a), (b), (c) and (d) of the GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the GDPR.

33.3.3 Each Party shall promptly (and without undue delay) notify the other Party if in relation to any Personal Data processed by it as independent Controller in the performance of its obligations or the exercise of its rights under this Contract if:

- (a) it receives a complaint, notice or communication which relates to either Party's actual or alleged non-compliance with the Data Protection Legislation; or
- (b) it becomes aware of a Personal Data Breach;

and shall provide the other Party with such assistance and cooperation as is reasonably requested by the other Party in order to address and resolve the complaint, notice, communication or Personal Data Breach.

33.3.4 In respect of any losses, cost claims or expenses incurred by either Party as a result of a Personal Data Breach (**the "Claim Losses"**): the Party responsible for the relevant breach shall be responsible for the Claim Losses.

33.3.5 The Parties agree to erase Personal Data from any computers, storage devices and storage media that are to be retained as soon as practicable after it has ceased to be appropriate for them to retain such Personal Data under applicable Data Protection Law Legislation and their privacy policy (save to the extent and for the limited period) that such information needs to be retained by the a Party for statutory compliance the purposes of complying with Law or as otherwise required by this Contract), and taking all further actions as may be necessary or desirable to ensure its compliance with Data Protection Law Legislation and its privacy policy

33.4 Where the Parties are both Controllers of Personal Data Jointly

33.4.1 Where the Parties jointly determine the purposes of means of processing Personal Data in accordance with GDPR Article 26, the Parties shall identify the applicable Personal Data under Joint Control in Appendix A and the Parties shall enter into a Joint Controller Agreement based on the terms outlined in Appendix B in replacement of Clause 33.2-33.3 which shall not apply for any such the Personal Data under Joint Control.

34. PUBLICITY AND BRANDING

34.1 The Supplier shall not:

- 34.1.1 make any press announcements or publicise this Contract or its contents in any way; or

- 34.1.2 use DFID's name or brand (including the 'UK aid logo') in any promotion, marketing, communications or announcement of orders;
without the prior written consent of the DFID.

34.2 Where and to the extent that DFID has provided consent pursuant to Clause 34.1, then the Supplier:

- 34.2.1 shall collaborate with DFID and proactively look for ways to build support for development and raise awareness of DFID's funding.
- 34.2.2 shall explicitly acknowledge DFID's funding, in written and verbal communications about activities related to the funding, to the public or third parties, including in announcements, and through use, where appropriate, of DFID's "UK aid – from the British people" logo ('UK aid logo') in accordance with DFID standards for use of the UK aid logo, unless otherwise agreed in advance by DFID and in all cases subject to security and safety considerations of the Supplier.
- 34.2.3 shall provide a visibility statement of how and when they or Sub-Contractors will acknowledge funding from DFID and where they will use the UK aid logo. The Supplier shall include reference to this in its progress reports and annual reviews.
- 34.2.4 may use the UK aid logo in conjunction with other donor logos, and where the number of donors to a programme or project is such as to make co-branding impractical, acknowledgement of funding from DFID shall be equal to that of other co-donors making contributions of equivalent amounts to the programme or project.

Liabilities

35. LIMIT OF LIABILITY

35.1 Neither Party limits its liability for:

- 35.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
- 35.1.2 fraud or fraudulent misrepresentation by it or its employees;
- 35.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- 35.1.4 any liability to the extent it cannot be limited or excluded by Law.

35.2 Subject to Clause 35.1, the Supplier's total aggregate liability in respect of all Losses (whether in tort, contract or otherwise) incurred by DFID under or in connection with the Contract as a result of Defaults by the Supplier shall not exceed the Financial Limit unless a different amount has been stated in Section 4 (Special Conditions) in which case that amount shall apply.

35.3 Subject to Clause 35.1, DFID's total aggregate liability in respect of all Losses (whether in tort, contract or otherwise) shall not exceed one hundred thousand pounds (£100,000).

35.4 Subject to Clause 35.1 neither Party be liable to the other for any:

- 35.4.1 loss of profits, turnover, savings business opportunities, revenue or damage to goodwill (in each case whether direct or indirect); and/or
- 35.4.2 indirect, special or consequential loss or damage of any nature and howsoever caused, even if the losses were reasonably foreseeable or the Party has been advised of the possibility of such losses occurring.

35.5 Subject to Clause 35.2, and notwithstanding Clause 35.4, the Supplier acknowledges that DFID may, amongst other things, recover from the Supplier the following losses incurred by DFID to the extent that they arise as a result of a Default by the Supplier:

- 35.5.1 any additional operational and/or administrative costs and expenses incurred by DFID, including costs relating to time spent by or on behalf of DFID in dealing with the consequences of the Default;
- 35.5.2 any wasted expenditure or charges;
- 35.5.3 the additional cost of procuring Replacement Services for the remainder of the Term, which shall include any incremental costs associated with such Replacement Services above those which would have been payable under this Contract;
- 35.5.4 any compensation or interest paid to a third party by DFID; and

35.5.5 any fine, penalty or costs incurred by DFID pursuant to Law.

36. INDEMNITY

- 36.1 Subject to Clauses 35.1 to 35.5 (inclusive), the Supplier shall indemnify DFID in respect of any Losses howsoever arising out of or in consequence of negligent acts or omissions by the Supplier or the Supplier Personnel or any claims made against DFID by third parties in respect thereof and in relation to this Contract.
- 36.2 The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of DFID or DFID's employees, or by breach by DFID of its obligations under the Contract.

37. INSURANCE

- 37.1 The Supplier shall effect and maintain insurances in relation to the performance of its obligations under this Contract in accordance with Schedule 3 (Insurance Requirements).
- 37.2 The Supplier shall ensure that its Sub-Contractors shall effect and maintain insurances (where appropriate) in relation to the performance of their obligations under any Sub-Contracts appropriate to Services being provided.
- 37.3 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities arising under this Contract.

Control of Contract

38. VARIATIONS

- 38.1 Either Party may request a variation to this Contract provided that such variation does not amount to a material change of this Contract within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a **"Variation"**.
- 38.2 A Party may request a Variation at any time by sending the request in writing to the relevant Contract Officer. The request shall contain sufficient information setting out:
- 38.2.1 the extent of the proposed Variation and any additional cost that may be incurred; and
- 38.2.2 a formal, technical and commercial justification.
- 38.3 In the event that the Parties are unable to agree a change to the Contract that may be included in a request of a Variation or response to as a consequence thereof DFID may:
- 38.3.1 agree to continue to perform its obligations under this Contract without the Variation; or
- 38.3.2 terminate this Contract with immediate effect, except where the Supplier has already fulfilled part or all of the provision of the Services in accordance with this Contract or where the Supplier can show evidence of substantial work being carried out to provide the Services under this Contract, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.
- 38.4 If the Parties agree the Variation, the Variation shall be effected upon both Parties signing the Contract Amendment Letter (Appendix A) and the Supplier shall implement such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in this Contract. DFID shall not be liable for any costs for any additional activity or otherwise undertaken by the Supplier where the Parties have not agreed in writing in an executed Contract Amendment Letter in accordance with this Clause 38 for such costs to be incurred or for the additional activity to be undertaken. The Supplier shall promptly return on request by DFID, any monies which DFID may have paid the Supplier in respect of activities or payments which have not been authorised by DFID in accordance with this Clause 38.

39. ASSIGNMENT AND NOVATION

- 39.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Contract without Approval.
- 39.2 Subject to Clause 39.1, the Supplier may assign to a third party ("the Assignee") the right to receive payment of the Charges or any part thereof due to the Supplier under this Contract (including any interest to which DFID is liable under the Late Payments of Commercial Debts (Interest) Act 1998). Any assignment under this Clause 39.2 shall be subject to:

- 39.2.1 deduction of any sums in respect of which DFID exercises its right of recovery under Clause 19 (Retention and Set Off);
- 39.2.2 all related rights of DFID under the Contract in relation to the recovery of sums due but unpaid; and
- 39.2.3 DFID receiving notification under both Clauses 39.3 and 39.4.
- 39.3 In the event that the Supplier assigns the right to receive the Charges under Clause 39.2, the Supplier shall notify DFID in writing of the assignment and the date upon which the assignment becomes effective.
- 39.4 The Supplier shall notify DFID of the assignee's contact information and bank account details to which DFID shall make payment.

Default and Termination

40. DFID REMEDIES FOR DEFAULT

40.1 Remedies

- 40.1.1 Without prejudice to any other right or remedy of DFID howsoever arising if the Supplier commits any Default of this Contract then DFID may (whether or not any part of the Services have been provided) do any of the following:
- (a) at DFID's option, give the Supplier the opportunity (at the Supplier's expense) to remedy the Default together with any damage resulting from such Default (where such Default is capable of remedy) or to supply Replacement Services and carry out any other necessary work to ensure that the terms of this Contract are fulfilled, in accordance with the DFID 's instructions;
 - (b) carry out, at the Supplier's expense, any work necessary to make the provision of the Services comply with this Contract;
 - (c) if the Default is a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults - whether of the same or different obligations and regardless of whether such Defaults are remedied - which taken together constitute a material Default):
 - (i) instruct the Supplier to comply with the Rectification Plan Process;
 - (ii) suspend this Contract (whereupon the relevant provisions of Clause 45 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) the Services;
 - (iii) without terminating or suspending the whole of this Contract, terminate or suspend this Contract in respect of part of the provision of the Services only (whereupon the relevant provisions of Clause 45 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) such part of the Services.
- 40.1.2 Where DFID exercises any of its step-in rights under Clauses 40.1.1 (c) (ii) or 40.1.1 (c) (iii), DFID shall have the right to charge the Supplier for and the Supplier shall on demand pay any costs reasonably incurred by DFID (including any reasonable administration costs) in respect of the supply of any part of the Services by DFID or a third party and provided that DFID uses its reasonable endeavours to mitigate any additional expenditure in obtaining Replacement Services.

40.2 Rectification Plan Process

- 40.2.1 Where DFID has instructed the Supplier to comply with the Rectification Plan Process pursuant to 40.1.1 (c) (i):
- (a) the Supplier shall submit a draft Rectification Plan to DFID for it to review as soon as possible and in any event within 10 (ten) Working Days (or such other period as may be agreed between the Parties) from the date of DFID's instructions. The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Default giving rise to the DFID's request for a draft Rectification Plan.
 - (b) the draft Rectification Plan shall set out:
 - (i) full details of the Default that has occurred, including a root cause analysis;
 - (ii) the actual or anticipated effect of the Default; and

- (iii) the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable).
- 40.2.2 The Supplier shall promptly provide to the DFID any further documentation that the DFID requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with Dispute Resolution Procedure.
- 40.2.3 DFID may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:
 - (a) is insufficiently detailed to be capable of proper evaluation;
 - (b) will take too long to complete;
 - (c) will not prevent reoccurrence of the Default; and/or
 - (d) will rectify the Default but in a manner which is unacceptable to DFID.
- 40.2.4 DFID shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If DFID rejects the draft Rectification Plan, DFID shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to DFID for review within five (5) Working Days (or such other period as agreed between the Parties) of the DFID's notice rejecting the first draft.
- 40.2.5 If DFID consents to the Rectification Plan, the Supplier shall immediately start work on the actions set out in the Rectification Plan.

41. FINANCIAL DISTRESS

- 41.1 The Supplier acknowledges and agrees that the financial stability and solvency of the Supplier and its key Sub-Contractors is critical to the successful delivery of the Services and that any deterioration or potential deterioration of their financial position may have an adverse effect on the performance of the Contract. The Supplier shall monitor its own financial standing and that of its key Sub-Contractors on a regular basis throughout the term using a Financial Monitoring Plan and shall report on this to DFID.
- 41.2 The Financial Monitoring Plan shall be designed by the Supplier to ensure that DFID has an early and clear warning indicator of any financial distress of the Supplier and key Sub-Contractors which may affect the Services; such design to be proportionate for the circumstances; taking into account the nature of the Services and the identity of the suppliers.
- 41.3 Except where DFID has agreed otherwise, the Supplier shall within four (4) weeks of the Commencement Date, prepare and submit via the Project Officer for Approval by DFID, a Financial Monitoring Plan which shall set out the Supplier's proposals for the monitoring and reporting of its financial stability, and the financial stability of its key Sub-Contractors to DFID on a regular basis throughout the Term.
- 41.4 The Financial Monitoring Plan may include (but shall not be limited to):
 - 41.4.1 A summary of the Supplier's and key Sub-Contractors' financial positions at the date of submission of the Financial Distress Plan and on a regular basis thereafter to DFID (including credit ratings, financial ratios, details of current liabilities, value of marketable securities, cash in hand and bank, account receivables etc.);
 - 41.4.2 An objective means of measuring the Supplier and key Sub-Contractor's financial standing on a regular basis throughout the Term against historical financial standing to show trend (including use of credit ratings, financial ratios and/or other financial indicators);
 - 41.4.3 The Supplier's proposals for reporting financial standing to DFID (including the template reporting forms which the Supplier intends to use);
 - 41.4.4 The frequency of monitoring and reporting activity;
 - 41.4.5 Provision of reporting lines for the supply chain to notify DFID of incidents of non-payment of valid and undisputed invoices;
 - 41.4.6 Any other provisions which in the reasonable opinion of the Supplier may be required by DFID to assess current financial standing of the Supplier and key Sub-Contractors and which enable quick and easy assessment of any movement in financial standing.

- 41.5 The Supplier shall make any reasonable amendments to the Financial Monitoring Plan as may be requested by DFID and shall resubmit it for Approval. If Approved by DFID, the Supplier shall promptly implement the Financial Monitoring Plan throughout the Term.
- 41.6 In addition to its obligations under the Financial Monitoring Plan, the Supplier shall promptly notify DFID in writing if any of the following "Financial Distress Events" occurs in respect of the Supplier or a key Sub-Contractor:
- 41.6.1 there is a material deterioration of its financial standing;
 - 41.6.2 the appointment of an administrator or receiver;
 - 41.6.3 late filing of statutory accounts with Companies House;
 - 41.6.4 it issues a profits warning or other similar public announcement about a deterioration in its finances or prospects;
 - 41.6.5 it is being publicly investigated for improper financial accounting and reporting, fraud or any other financial impropriety;
 - 41.6.6 it commits a material breach of covenant to its lenders;
 - 41.6.7 a key Sub-Contractor not being paid any sums properly due under a specified invoice that is not subject to a genuine dispute;
 - 41.6.8 it is subject to any claims, litigation, investigations, actions or decisions in respect of financial indebtedness.
- 41.7 In the event of a Financial Distress Event occurring, then the Supplier shall and shall procure that any affected key Sub-Contractor shall, as soon as reasonably practicable review the effect of the Financial Distress Event on the continued performance of the Services under this Contract and provide a report to DFID. Where DFID reasonably believes that the Financial Distress Event is likely to adversely impact on the performance of the Services, the Supplier shall submit to DFID for Approval a Financial Distress Service Continuity Plan as soon as is reasonably practicable and shall provide any further financial information as DFID may reasonably require to assess financial standing and risks.
- 41.8 If DFID acting reasonably considers that the Financial Distress Service Continuity Plan is insufficient to remedy the effects of the Financial Distress Event on the Service, then it may require the Supplier (and/or key Sub-Contractor) to redraft and resubmit an improved and updated plan or may require the issue to be escalated via the Dispute Resolution Procedure.
- 41.9 If DFID Approves the Financial Distress Service Continuity Plan, then the Supplier shall execute and continue to review the plan (with submissions to DFID for Approval where it is updated).
- 41.10 Where the Parties agree that the Financial Distress Event no longer adversely affects the delivery of the Services, the Supplier shall be relieved of its obligations in respect of the current Financial Distress Service Continuity Plan.
- 41.11 DFID shall be entitled to terminate this Contract for material Default if:
- 41.11.1 The Supplier fails to notify DFID of a Financial Distress Event in accordance with Clause 41.6;
 - 41.11.2 DFID and the Supplier fail to agree a Financial Distress Service Continuity Plan or any updates to a plan within a reasonable timescale (taking into account the effects of the Financial Distress Event on the Services);
 - 41.11.3 The Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan or any updates to the plan.
- 42. FORCE MAJEURE**
- 42.1 Subject to the remainder of this Clause 42, a Party may claim relief under this Clause 42 from liability for failure to meet its obligations under this Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
- 42.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 42.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 42 to the extent that consequences of the relevant Force Majeure Event:

- 42.3.1 are capable of being mitigated by any of the provision of any Services but the Supplier has failed to do so; and/or
- 42.3.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Contract.

42.4 Subject to DFID's right to terminate set out in Clause 42.5, the Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

42.5 Where DFID receives a Force Majeure Notice, from the date of receipt of the Force Majeure Notice, DFID may, at its sole discretion, either suspend this Contract for a period of up to six (6) months ("the Suspension Period") or terminate this Contract forthwith.

42.6 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract.

42.7 Relief from liability for the Affected Party under this Clause 42 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Contract and shall not be dependent on the serving of notice under Clause 42.6.

42.8 If by the end of the Suspension Period the Parties have not agreed a further period of suspension or re-instatement of the Contract, this Contract shall terminate automatically.

43. TERMINATION WITHOUT DEFAULT OF THE SUPPLIER

43.1 DFID may, at its sole discretion, terminate this Contract, at any time by issuing a Termination Notice to the Supplier giving at least thirty (30) Working Days written notice (unless stated differently in Section 4 (Special Conditions)).

44. TERMINATION WITH DEFAULT OF THE SUPPLIER

44.1 DFID may terminate this Contract for material Default by issuing a Termination Notice to the Supplier where:

- 44.1.1 any representation or warranty given by the Supplier pursuant to Clause 2 (Representations and Warranties) is materially untrue or misleading, and the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of DFID are acceptable;
- 44.1.2 DFID expressly reserves the right to terminate this Contract for material Default;
- 44.1.3 the Supplier commits any material Default of the Contract which is not, in the reasonable opinion of DFID, capable of remedy; and/or
- 44.1.4 the Supplier commits a Default, including a material Default, which in the opinion of DFID is remediable but has not remedied such Default to the satisfaction of DFID in accordance with the Rectification Plan Process.

44.2 For the purpose of Clause 44.1, a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default.

44.3 DFID may, without prejudice to its other rights, including but not limited to the right to claim for Losses incurred, issue a Termination Notice where:

- 44.3.1 the Supplier or any Supplier Personnel, either directly or through their servants or agents or Sub-Contractors breaches any of their obligations under this Contract; or
- 44.3.2 the Supplier, Supplier Personnel, servants, agents or Sub-Contractors, or any person acting on their behalf has committed an offence under the Bribery Act 2010 or the Terrorism Act 2000 in breach of Clauses 48 or 49 of this Contract; or
- 44.3.3 DFID has the right to terminate under Clause 38.3.2; or
- 44.3.4 the Supplier is an individual or a partnership and at any time:

- (a) becomes bankrupt; or

- (b) is the subject of a receiving order or administration order; or
- (c) makes any composition or arrangement with or for the benefit of the Supplier's creditors; or
- (d) makes any conveyance or assignment for the benefit of the Supplier's creditors; or
- (e) the warranty given by the supplier pursuant to Clause 24 (Tax Compliance) is materially untrue; or
- (f) the Supplier commits a material breach of its obligation to notify DFID of any Occasion of Tax Non-Compliance as required by Clause 24 (Tax Compliance); or
- (g) the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of DFID, are acceptable; or

44.3.5 the Supplier is a company and:

- (a) an order is made or a resolution is passed for the winding up of the Supplier; or
- (b) a receiver or administrator is appointed in respect of the whole or any part of the undertaking of the Supplier; or

44.3.6 the Supplier is a partnership or a company and there is a Change of Control.

44.3.7 there is an occurrence of any of the statutory provisos contained in Regulation 73(1)(a)-(c) of the Regulations.

44.4 Where this Contract is terminated in accordance with this Clause 44, the Supplier shall without prejudice to DFID's other remedies, take any steps necessary to terminate the provision of the Services in a timely and orderly manner and in compliance with Clause 16 (Exit Management) but shall not be entitled to any further payment in relation to this Contract.

45. PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION

45.1 Where DFID has the right to terminate this Contract, DFID shall be entitled to terminate or suspend all or part of this Contract provided always that, if DFID elects to terminate or suspend this Contract in part, the parts of this Contract not terminated or suspended can, in DFID's reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Contract.

45.2 Any suspension of this Contract under Clause 45.1 shall be for such period as DFID may specify and without prejudice to any right of termination which has already accrued, or subsequently accrues, to DFID.

45.3 The Parties shall seek to agree the effect of any Variation necessitated by a partial termination, suspension or partial suspension in accordance with the procedure set out in Clause 38 (Variation), including the effect that the partial termination, suspension or partial suspension may have on the provision of any other Services and the Charges, provided that the Supplier shall not be entitled to:

45.3.1 an increase in the Charges in respect of the provision of the Services that have not been terminated if the partial termination arises due to the exercise of any of DFID's termination rights under Clause 44 (Termination With Default of the Supplier) except Clause 43 (Termination Without Default of the Supplier); and

45.3.2 reject the Variation.

46. CONSEQUENCES OF EXPIRY OR TERMINATION

46.1 Where this Contract has been terminated pursuant to Clause 43 (Termination Without Default of the Supplier), the Supplier shall:

46.1.1 take such steps as are necessary to terminate the provision of the Services or any part of the Services (including suspending or terminating any Sub-Contracts) in a cost-effective, timely and orderly manner;

46.1.2 act in accordance with Clause 16 (Exit Management); and

46.1.3 provide to DFID, not more than 60 days after DFID notifies the Supplier of the termination of this Contract an account in writing with detailed supporting evidence, stating:

- (a) any costs, if any, due before the date of termination, which cannot be avoided by the Supplier using reasonable endeavours; and

- (b) costs to be expended after the date of termination which the Supplier necessarily incurred in the proper performance of this Contract and which the Supplier cannot reasonably avoid or recover using reasonable endeavours;

and, subject to Approval, DFID shall pay such amount stated pursuant to Clause 46.1.3 to the Supplier within 30 days of receipt from the Supplier of a Valid Invoice in respect of the amount due.

- 46.2 Where this Contract is terminated under Clause 44 (Termination with Default of the Supplier) and DFID makes other arrangements for the provision of Services DFID may recover from the Supplier pursuant to Clause 19 (Retention and Set Off) or otherwise, the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by DFID throughout the remainder of the Term provided that DFID shall take all reasonable steps to mitigate such additional expenditure.
- 46.3 Where this Contract is terminated for any reason, save as expressly provided in this Contract:
 - 46.3.1 termination or expiry of this Contract shall be without prejudice to any rights, remedies or obligations accrued under this Contract prior to termination or expiration and nothing in this Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
 - 46.3.2 termination of this Contract shall not affect the continuing rights, remedies or obligations of DFID or the Supplier under Clauses 15, 16, 17, 18, 19, 21, 22, 25, 28, 29, 30, 31, 32, 33, 35, 36, 46, 47, 52 and 57, and the provisions of Schedule 2 (Staff Transfer) of this Section 2 and any relevant clauses listed under Section 4 (Special Conditions), and, without limitation to the foregoing, any other provision of this Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the Expiry Date.

MISCELLANEOUS AND GOVERNING LAW

47. DISPUTE RESOLUTION PROCEDURE

- 47.1 The Parties will attempt in good faith to negotiate a settlement to any Dispute between them arising out of or in connection with this Contract. If the matter is not resolved by negotiation within 45 days of when either Party first made contact in respect of the same, the Parties will refer the Dispute to mediation in accordance with CEDR (Centre for Effective Dispute Resolution in London, UK) procedures. If the parties fail to agree terms of settlement within 90 days of the initiation of the procedure the Dispute may be referred to an arbitrator as agreed between the parties or failing such agreement as may be nominated by the President of the Law Society of England and Wales upon application of any Party. The initiation of the procedure is defined as the written request to CEDR by any Party for mediation provided that such request is copied to the other Party.
- 47.2 The decision of the arbitrator shall be final and binding on both Parties.
- 47.3 The seat and place of arbitration shall be London.

48. PREVENTION OF FRAUD AND BRIBERY

- 48.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, any person acting on their behalf, have at any time prior to the Commencement Date:
 - 48.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - 48.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 48.2 The Supplier, Supplier Personnel, or any person acting on their behalf shall not during the Term:
 - 48.2.1 commit a Prohibited Act; and/or
 - 48.2.2 do or suffer anything to be done which would cause DFID or any of DFID's employees, consultants, suppliers, Sub-Contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 48.3 The Supplier shall during the Term:
 - 48.3.1 establish, maintain and enforce, and require that its Supplier Personnel establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;

- 48.3.2 keep appropriate records of its compliance with its obligations under Clause 48.3.1 and make such records available to DFID on request.
- 48.4 The Supplier shall immediately notify DFID in writing if it becomes aware of any breach of Clause 48.1 and/or Clause 48.2, or has reason to believe that it has or any Supplier Personnel, servants, agents or Sub-Contractors, or any person acting on their behalf have:
- 48.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- 48.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- 48.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.
- 48.5 The Supplier warrants and represents to DFID that to the best of its knowledge, that neither the Supplier, Supplier Personnel, servants, agents or Sub-Contractors, or any person acting on their behalf:
- 48.5.1 has given, offered or agreed to give or accepted, any gift or consideration of any kind as an inducement or reward for doing or for bearing to do or for having done or forborne to do any act in relation to the obtaining or execution of any contract or for showing or forbearing to show favour or disfavour to any person or entity in relation to any contract; or
- 48.5.2 has entered into any contract in connection with which commission has been paid or agreed to be paid by or to the Supplier or Supplier Personnel or on their behalf or to their knowledge unless, before such contract was made, particulars of any such commission and of the terms of any agreement for the payment of such commission were disclosed in writing to DFID, whose written consent was subsequently given to such payment.
- 48.6 Neither the Supplier or the Supplier Personnel or any person acting on their behalf shall accept for their own benefit or pass on for the benefit of partner government, recipient or end user, any trade commission, discount, voucher scheme, re-sale or similar payment or benefit in connection with this Contract.
- 48.7 Where the Supplier or Supplier Personnel, or any person acting on their behalf, does any of the acts mentioned in Clause 48.5 or commits any offence under the Bribery Act 2010, with or without the knowledge of the Supplier, in relation to this Contract or any other contract with the Crown, DFID shall be entitled:
- 48.7.1 to terminate the Contract with immediate effect by written notice to the Supplier and recover from the Supplier the amount of any Losses resulting from the termination;
- 48.7.2 to recover from the Supplier the amount or value of any such gift, consideration or commission;
- 48.7.3 to recover from the Supplier any other Losses sustained as a result of any breach of this Clause 48, whether or not the Contract is terminated.
- 48.8 DFID, the Supplier and the Supplier Personnel shall immediately and without undue delay inform each other of any event that interferes or threatens to materially interfere with the successful delivery of the Services, whether financed in full or in part by DFID, including credible suspicion of/or actual fraud, bribery, corruption or any other financial irregularity or impropriety.
- DFID has an expert fraud investigation unit, that should be contacted in the first instance at reportingconcerns@dfid.gov.uk or +44 (0)1355 843747. All suspicions will be treated with the utmost confidentiality.

49. ANTI-TERRORISM REGULATIONS

- 49.1 In accordance to the Terrorism Act 2000 and all subsequent regulations pursuant to this Act, the Supplier will assure itself to the best of its knowledge that UK funding, including financial assets or economic resources is not made available, either directly or indirectly to, or for the benefit of persons, groups or entities listed in accordance with European Council Regulation EC/2580/2001 (as amended) and/or the Terrorism (United Nations Measures) Orders 2009 of the United Kingdom, or contravene the provisions of those and any subsequent applicable terrorism legislation.
- 49.2 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, servants, agents or Sub-Contractors, or any person acting on their behalf, have at any time prior to the Commencement Date and/or during the term of this Contract appeared on the Home Office Proscribed Terrorist Organisations List.
- 49.3 The Supplier shall immediately notify DFID in writing if it becomes aware of any breach of Clause 49.1 and/or Clause 49.2, or has reason to believe that it has or any Supplier Personnel, servants, agents or Sub-Contractors, or any person acting on their behalf have:
- 49.3.1 been subject to an investigation or prosecution which relates to an alleged infringement of Clause 49.1 and/or Clause 49.2;

49.3.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts.

49.4 Where the Supplier or any of his employees, servants, agents or Sub-Contractors, or any person acting on their behalf, breaches any of the acts mentioned in Clause 49.1 and/or Clause 49.2 commits any offence under the Terrorism Act 2000, with or without the knowledge of the Supplier, in relation to this Contract or any other contract with the Crown, DFID shall be entitled:

49.4.1 to terminate the Contract with immediate effect by written notice to the Supplier and recover from the Supplier the amount of any loss resulting from the termination;

49.4.2 to recover from the Supplier any other loss sustained as a result of any breach of this Clause 49, whether or not the Contract has been terminated.

50. SAFEGUARDING

50.1 For the purposes of this Clause 50, “Reasonable Measures” shall mean:

all reasonable endeavours expected to be taken by a professional and prudent supplier in the Supplier’s industry to eliminate or minimise risk of actual, attempted or threatened exploitation, abuse and harassment (including Sexual Abuse, Sexual Exploitation and Sexual Harassment) and whether or not such conduct would amount to a criminal offence in the United Kingdom or an offence under the laws of the territory in which it takes place (together “**Serious Misconduct**”) as is reasonable and proportionate under the circumstances. Such endeavours may include (but shall not be limited to):

(a) clear and detailed policies and guidance for Supplier Personnel, Supplier Providers and where appropriate, beneficiaries;

(b) developing, implementing and maintaining a safeguarding plan throughout the term (including monitoring);

(c) provision of regular training to Supplier Personnel, Supplier Providers and where appropriate, beneficiaries

(d) clear reporting lines and whistleblowing policies in place for Supplier Personnel, Supplier Providers and beneficiaries,

(e) maintaining detailed records of any allegations of Serious Misconduct and regular reporting to DFID and the Appropriate Authorities (where relevant) of any such incidents;

(f) any other Good Industry Practice measures (including any innovative solutions),

50.2 The Supplier shall take all Reasonable Measures to prevent Serious Misconduct by the Supplier Personnel or any other persons engaged and controlled by it to perform any activities under this Agreement (“**Supplier Providers**”) and shall have in place at all times robust procedures which enable the reporting by Supplier Personnel, Supplier Providers and beneficiaries of any such Serious Misconduct, illegal acts and/or failures by the Supplier or Supplier Personnel to investigate such reports.

50.3 The Supplier shall take all Reasonable Measures to ensure that the Supplier Personnel and Supplier Providers do not engage in sexual activity with any person under the age of 18, regardless of the local age of majority or age of consent or any mistaken belief held by the Supplier Personnel or Supplier Provider as to the age of the person. Furthermore, the Supplier shall ensure that the Supplier Personnel and Supplier Providers do not engage in ‘transactional sex’ which shall include but not be limited to the exchange of money, employment, goods, or services for sex and such reference to sex shall include sexual favours or any form of humiliating, degrading or exploitative behavior on the part of the Supplier Personnel and the Supplier Providers. For the avoidance of doubt, such ‘transactional sex’ shall be deemed to be Serious Misconduct in accordance with Clause 50.1.

50.4 The Supplier shall promptly report in writing any complaints, concerns and incidents regarding Serious Misconduct or any attempted or threatened Serious Misconduct by the Supplier Personnel and Supplier Providers to DFID, including DFID’s Counter Fraud Section at reportingconcerns@dfid.gov.uk or +44 (0)1355 843747, and where necessary, the Appropriate Authorities.

50.5 The Supplier shall fully investigate and document all cases or potential cases of Serious Misconduct and shall take appropriate corrective action to reduce the risk and/or eliminate Serious Misconduct being committed by the Supplier Personnel and Supplier Providers (which may include disciplinary action, termination of contracts etc.), such investigations and actions to be reported to DFID as soon as is reasonably practicable

50.6 The Supplier shall not engage as Supplier Personnel or Supplier Provider for the purposes of the Services any person whose previous record or conduct known to the Supplier (or reasonably ought to be known by a diligent supplier which undertakes the appropriate checks) indicates that they are unsuitable to perform the Services and/or where they represent an increased and unacceptable risk of committing Serious Misconduct.

50.7 The Supplier shall comply with all applicable laws, legislation, codes of practice and government guidance in the UK and additionally, in the territories where the Services are being performed, relevant to safeguarding and protection of children and vulnerable adults, which the Supplier acknowledges may include vetting of the Supplier Personnel by the UK Disclosure and Barring Service in respect

of any regulated activity performed by the Supplier Personnel (as defined by the Safeguarding Vulnerable Groups Act 2006 (as amended)) and/or vetting by a local equivalent service. Where DFID reasonably believes that there is an increased risk to safeguarding in the performance of the Services, the Supplier shall comply with any reasonable request by DFID for additional vetting to be undertaken.

50.8 Failure by the Supplier to:

50.8.1 put in place preventative measures to eliminate and/or reduce the risk of Serious Misconduct; or

50.8.2 fully investigate allegations of Serious Misconduct; or

50.8.3 report any complaints to DFID and where appropriate, the relevant authorities (including law enforcement)

shall be a material Default of this Contract and shall entitle DFID to terminate this Contract with immediate effect.

51. DISCRIMINATION

51.1 The Supplier shall not unlawfully discriminate either directly or indirectly against protected characteristics such as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the provisions of all relevant legislation including the Equality Act 2010, the International Development (Gender Equality) Act 2014 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof. The Supplier shall ensure that in its delivery of the Services, it has due regard for the advancement of equal opportunity and promotes good relations between people who share a protected characteristic and those who do not, as required by the equality legislation.

51.2 The Supplier shall adhere to the current relevant codes of practice or recommendations published by the Equality and Human Rights Commission. The Supplier shall take all reasonable steps to secure the observance of these provisions and codes of conduct by all suppliers, employees or agents of the Supplier and all suppliers and Sub-Contractors employed in the execution of this Contract.

51.3 The Supplier will comply with any request by DFID to assist DFID in meeting its obligations under the Equality Act 2010 and to allow DFID to assess the Supplier's compliance with its obligations under the Equality Act 2010.

51.4 Where any investigation is concluded or proceedings are brought under the Equality Act 2010 which arise directly or indirectly out of any act or omission of the Supplier, its agents or Sub-Contractors, or Supplier Personnel, and where there is a finding against the Supplier in such investigation or proceedings, the Supplier will indemnify DFID with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment DFID may have been ordered or required to pay to a third party.

52. LAW AND JURISDICTION

52.1 This Contract shall be governed by and interpreted in accordance with English Law and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

53. ENVIRONMENTAL REQUIREMENTS

53.1 The Supplier shall provide the Services and any goods & equipment required under the Contract in accordance with applicable national and international laws, including those of the country or countries in which the Services or goods & equipment are to be provided, and DFID's environmental operations policy, which is to conserve energy, water and other resources, reduce waste, phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

53.2 The Supplier shall work with DFID and the populations that are potentially affected by its operations under the Contract regarding any environmental issues that could affect the sustainable development provisions of the International Development Act (2002), comply with special conditions as stipulated in the Terms of Reference and carry out any reasonable additional request to ensure the protection of the environment, society and the economy throughout the contract period.

53.3 The Supplier shall ensure it has the requisite expertise and controls to identify and mitigate all factors that may affect compliance with the conditions outlined in Clauses 53.1 and 53.2 as a result of its own operations or those of Sub-Contractors working on its behalf.

53.4 The Supplier shall promptly notify DFID of any changes in potential material adverse effects from its operations under the Contract and of the occurrence of any incident or accident related to the Project that has or is likely to have a significant adverse effect on the environment.

53.5 Nothing in Clauses 53.1 to 53.3 shall relieve the obligations of the Supplier to comply with its statutory duties and Good Industry Practice.

54. CONFLICT OF INTEREST

54.1 Neither the Supplier nor any of the Supplier Personnel shall engage in any personal, business or professional activity which conflicts or could conflict with any of their obligations in relation to this Contract.

54.2 The Supplier and the Supplier Personnel shall notify DFID immediately of any actual or potential conflict together with recommendations as to how the conflict can be avoided.

54.3 The Supplier shall establish and maintain appropriate business standards, procedures and controls to ensure that no conflict of interest arises between Services undertaken for DFID and that undertaken for other clients. The Supplier shall avoid knowingly committing any acts which are likely to result in any allegation of impropriety against DFID, including conflicts of interest which are likely to prejudice their independence and objectivity in performing the Contract, howsoever arising.

54.4 The Supplier shall notify DFID immediately of any circumstances of which it becomes aware which give rise or potentially give rise to a conflict with the Services and shall advise DFID of how they intend to avoid such a conflict arising or remedy such situation. The Supplier shall, subject to any obligations of confidentiality it may have to third parties, provide all information and assistance reasonably necessary (at the Supplier's cost) that DFID may request of the Supplier in order to avoid or resolve a conflict of interest and shall ensure that at all times they work together with DFID with the aim of avoiding a conflict or remedy a conflict.

54.5 Pursuant to Clause 54.4, DFID shall have the right to require that the Supplier puts in place Ethical Walls and will ensure and satisfy DFID that all information relating to the Contract and to the Services (including all working papers, draft reports in both tangible and intangible form) are not shared or made available to person(s) other than Supplier Personnel and that such matters are not discussed by any person(s) other than Supplier Personnel.

54.6 In the event of a failure to maintain the Ethical Walls as described above arising during the course of this Contract, DFID reserves the right to immediately terminate the Contract on giving written notice to the Supplier.

55. WAIVER

55.1 A waiver of any of the terms and/or conditions of this Contract shall be valid only where it is agreed expressly in writing and signed by the parties. No failure or delay by a Party to exercise any right or remedy provided under this Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

56. ENTIRE AGREEMENT

56.1 The Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this Clause 56.1 shall not exclude liability in respect of any fraudulent misrepresentation.

56.2 The Supplier is not the agent of DFID and has no authority to represent and shall not purport to represent or enter into any commitments on behalf of DFID in any respect.

56.3 Nothing in this Contract is intended to make nor shall it make DFID the employer of the Supplier or any of the Supplier Personnel.

56.4 All communications by the Supplier relating to the Contract must be addressed to the DFID Contract Officer whose name and address is given in Section 4 (Special Conditions).

57. THIRD PARTY RIGHTS

57.1 The provisions of paragraphs 2.1 and 2.6 of Part A, paragraphs 2.1, 2.6, 3.1 and 3.3 of Part B, paragraphs 2.1 and 2.3 of Part C and paragraphs 1.4, 2.3 and 2.8 of Part D of Schedule 2 (Staff Transfer) (together the "**Third Party Provisions**") confer benefits on persons named in such provisions other than the Parties (each such person a "**Third Party Beneficiary**") and are intended to be enforceable by Third Parties Beneficiaries by virtue of the Contracts (Rights of Third Parties) Act 1999 ("**CRTPA**").

57.2 Subject to Clause 57.1, a person who is not a Party to this Contract has no right under the CRTPA to enforce any term of this Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

57.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of DFID, which may, if given, be given on and subject to such terms as DFID may determine.

57.4 Any amendments or modifications to this Contract may be made, and any rights created under Clause 57.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

58. NOTICES

58.1 Except as otherwise expressly provided within this Contract, any notices sent under this Contract must be in writing. For the purpose of Clause 58, an e-mail is accepted as being "in writing".

58.2 Subject to Clause 58.3, the following table sets out the method by which notices may be served under this Contract and the respective deemed time and proof of service:

Manner of delivery	Deemed time of delivery	Proof of Service
Email (Subject to Clauses 58.3 and 58.4)	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day	Properly addressed and delivered as evidenced by signature of a delivery receipt
Royal Mail Signed For™ 1 st Class or other prepaid, next Working Day service providing proof of delivery	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm)	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

58.3 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or Royal Mail Signed For™ 1st Class or other prepaid in the manner set out in the table in Clause 58.2:

58.3.1 any Termination Notice (Clause 43 (Termination Without Default of the Supplier) and Clause 44 (Termination With Default of the Supplier)); and

58.3.2 any notice in respect of:

- (a) partial termination, suspension or partial suspension (Clause 45 (Partial Termination, Suspension and Partial Suspension)),
- (b) waiver (Clause 55 (Waiver)); or
- (c) Default.

58.4 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 58.3 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 58.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

58.5 Clause 58 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

58.6 For the purposes of Clause 58, the address and email address of each Party shall be as specified in Section 4 (Special Conditions).

SCHEDULE 1: DEFINITIONS

Unless otherwise provided or the context otherwise requires the following expressions shall have the meanings set out below:

“Actual Profit Margin” means the actual profit achieved during the relevant period set out in Clause 20.1;

“Affected Party” the Party seeking to claim relief in respect of a Force Majeure Event;

“Affiliate” in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;

“Approval” means the prior written consent of DFID and **“Approve”** and **“Approved”** shall be construed accordingly;

“Auditor” means:

- (a) DFID’s internal and external auditors;
- (b) DFID’s statutory or regulatory auditors;
- (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
- (d) HM Treasury or the Cabinet Office;
- (e) any party formally appointed by DFID to carry out audit or similar review functions; and
- (f) successors or assigns of any of the above.

“Appropriate Authorities” means any and/or all of (as may be relevant under the circumstances) the UK government bodies and/or government bodies/agencies in the territory where Serious Misconduct may have or is suspected of having taken place, which have responsibility for safeguarding, recording, investigating, enforcing and/or determining allegations of Serious Misconduct and which may include (but shall not be limited to), the DFID, the National Crime Agency, UK Police force, local territory police forces, and social services.

“Central Government Body” a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- (a) Government Department;
- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department; or
- (d) Executive Agency;

“Change of Control” means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;

“Charges” means the charges raised under or in connection with this Contract from time to time, which shall be calculated in a manner that is consistent with Schedule 5 (Schedule of Prices) and the eligible cost guidance.

“Commencement Date” means the date identified in Section 1 Form of Contract.

“Commercially Sensitive Information” the information listed in Section 4 (Special Conditions) comprising the information of a commercially sensitive nature relating to the Supplier, its intellectual property rights or its business of which the Supplier has indicated to DFID that, if disclosed by DFID, would cause the Supplier significant commercial disadvantage of material financial loss.

“Confidential Information” means all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of either party, including all intellectual property rights, together with all information derived from any of the above, and any other information clearly being designated as being confidential (whether or not it is marked “confidential”) or which ought reasonably be considered to be confidential.

“Contract” means this agreement between DFID and the Supplier consisting of this Section 2 (Standard Terms and Generals) and any attached Schedules and Appendices

“Contract Amendment Letter” means the form set out in Appendix A.

“Contract Officer” means the person named in Section 4 who is responsible for all contractual aspects of the Contract.

“Contracts Finder” means the Government’s publishing portal for public sector procurement opportunities.

“Control” means control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and **“Controlled”** shall be construed accordingly;

“Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer” take the meaning given in the GDPR.

“Data Protection Legislation” (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy.

“Data Protection Impact Assessment”: an assessment by the Data Controller of the impact of the envisaged processing on the protection of Personal Data.

“Data Loss Event”: any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

“Data Subject Access Request”: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

“DPA 2018” means the Data Protection Act 2018

“Default” means any breach of the obligations of the Supplier (including but not limited to including abandonment of this Contract in breach of its terms) or any other default (including material Default), act, omission, negligence or statement of the Supplier, of the Supplier Personnel howsoever arising in connection with or in relation to the subject-matter of this Contract and in respect of which the Supplier is liable to DFID;

“Delivery Chain” means all of the Supplier’s Sub-Contractors, Supplier Providers and partners involved in delivering a specific good, service or change for the purposes of the Services provided under this Agreement, down to the end beneficiary;

“DFID Background IPR” means:

- a) IPRs owned by DFID before the Commencement Date, including IPRs contained in any of DFID’s know-how, documentation, software, processes and procedures;
- b) IPRs created by DFID independently of this Contract; and/or
- c) Crown Copyright which is not available to the Supplier otherwise than under this Contract;

“DFID Data” means (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Supplier by or on behalf of DFID; or (ii) which the Supplier is required to generate, process, store or transmit pursuant to this Contract; or (b) any Personal Data for which DFID is the Data Controller.

“DFID System” DFID’s computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by DFID or the Supplier in connection with this Contract which is owned by DFID or licensed to it by a third party and which interfaces with the Supplier System or which is necessary for DFID to receive the Services;

“Dispute” any dispute, difference or question of interpretation arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Variation Procedure or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;

“Dispute Resolution Procedure” means the dispute resolution procedure set out in Clause 47;

“DOTAS” means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.

“Employee Liabilities” means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:

- a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- b) unfair, wrongful or constructive dismissal compensation;
- c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- d) compensation for less favourable treatment of part-time workers or fixed term employees;
- e) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by DFID or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Sub-Contractor if such payment should have been made prior to the Service Transfer Date;
- f) claims whether in tort, contract or statute or otherwise;
- g) any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

“Employment Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;

“Employment Business” means an employment agency is an organization which matches employers to employees. In all developed countries there is a publicly funded employment agency and multiple private businesses which also act as employment agencies.

“Environmental Information Regulations” means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;

“Ethical Walls” means a process for avoiding conflicts of interest by limiting disclosure of information to certain individuals within an organisation, thereby building a metaphorical wall between the holders of information and colleagues who represent interests or hold opinions which conflict.

“Euro Compliant” means that:

- (i) the introduction of the euro within any part(s) of the UK shall not affect the performance or functionality of any relevant items nor cause such items to malfunction, end abruptly, provide invalid results or adversely affect DFID’s business;
- (ii) all currency-reliant and currency-related functions (including all calculations concerning financial data) of any relevant items enable the introduction and operation of the euro; and
- (iii) in particular each and every relevant item shall, to the extent it performs or relies upon currency-related functions (including all calculations concerning financial data):
 - (a) be able to perform all such functions in any number of currencies and/or in euros;
 - (b) during any transition phase applicable to the relevant part(s) of the UK, be able to deal with multiple currencies and, in relation to the euro and the national currency of the relevant part(s) of the UK, dual denominations;
 - (c) recognise, accept, display and print all the euro currency symbols and alphanumeric codes which may be adopted by any government and other European Union body in relation to the euro;
 - (d) incorporate protocols for dealing with rounding and currency conversion;
 - (e) recognise data irrespective of the currency in which it is expressed (which includes the euro) and express any output data in the national currency of the relevant part(s) of the UK and/or the euro; and
 - (f) permit the input of data in euro and display an outcome in euro where such data, supporting DFID’s normal business practices, operates in euro and/or the national currency of the relevant part(s) of the UK.

“Equipment” means any equipment, computer hardware or software, materials, goods and vehicles and associated services necessarily required for the implementation of the Services, which the Supplier cannot reasonably be expected to provide, which are financed or provided by DFID for use by the Supplier.

“Exit Management” services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Supplier to DFID and/or a Replacement Supplier.

“Exit Plan” the plan produced and updated by the Supplier during the Term in accordance with Terms of Reference and Clause 16;

“Expiry Date” means:

- (a) the end date of the Initial Period or, if exercised, the end date of any Extension Period; or
- (b) if this Contract is terminated before the date specified in (a) above, the earlier date of termination of this Contract;

“Extension Period” means such period or periods up to a maximum of the number of years in total as may be specified by DFID, pursuant to Clause 4.2 and in Section 4 (Special Conditions);

“Financial Limit” means the amount specified in Section 1 (Form of Contract) and is the maximum amount of Charges paid by DFID and which DFID has agreed are duly payable under this Contract for the receipt of the Services.

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation.

“Force Majeure Event” any event outside the reasonable control of either Party affecting its performance of its obligations under this Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, government or regulatory bodies, fire, flood, storm

or earthquake, or disaster but excluding any industrial dispute relating to the Supplier or the Supplier Personnel, servants, agents or Sub-Contractors, or any person acting on their behalf or any other failure in the Supplier's or a Sub-Contractor's supply chain;

"Force Majeure Notice" a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;

"Former Supplier" means a supplier supplying services to DFID before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any Sub-Contractor of such supplier (or any Sub-Contractor of any such Sub-Contractor);

"GDPR" the General Data Protection Regulation (*Regulation (EU) 2016/679*).

"General Anti-Abuse Rule" means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions.

"Good Industry Practice" at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like DFID, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws;

"Halifax Abuse Principle" means the principle explained in the CJEU Case C-255/02 Halifax and others.

"HM Government Cyber Essentials Scheme" means the HM Government Cyber Essentials Scheme as further defined in the documents relating to this scheme published at <https://www.gov.uk/government/publications/cyber-essentials-scheme-overview>

"IATI" means the International Aid Transparency Initiative standard and is a technical publishing framework allowing data to be compared. It is designed to report forward-looking aggregate budget information for the reported organisations, and planned future budgets to recipient institutions or countries.

"ICT Environment" means the DFID System and the Supplier System;

"Information" has the meaning given under Section 84 of the Freedom of Information Act 2000; including all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form);

"Initial Period" means the initial term of this Contract from the Commencement Date to the end date of the initial term stated in Section 4 (Special Conditions);

"Intellectual Property Rights" or "IPRs" means

- (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semiconductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;
- (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and

all other rights having equivalent or similar effect in any country or jurisdiction;

"IPR Claim" means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to DFID (including any claims arising from the publication of the Project Specific IPRs as open source) in the fulfilment of its obligations under this Contract

"Joint Control" means Personal Data which under the Control of Joint Controllers in accordance with GDPR Article 26;

"Joint Controllers" means where two or more Controllers jointly determine the purposes and means of processing;

"Key Personnel" means the individuals (if any) identified as such in Section 4 (Special Conditions);

"Key Performance Indicators" or "KPIs" means a set of quantifiable measures that DFID and Supplier will use to measure the performance of the Services provided by the Supplier under the Contract (as defined in Section 3 Terms of Reference).

"Law" means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;

"LED" means Law Enforcement Directive (*Directive (EU) 2016/680*)

“Licensed Software” all and any Software licensed by or through the Supplier, its Sub-Contractors or any third party to DFID for the purposes of or pursuant to this Contract, including any Supplier Software, Third Party Software and/or any Specially Written Software;

“Losses” means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and **“Loss”** shall be interpreted accordingly;

“Malicious Software” any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;

“Milestone” an event or task described in the Implementation Plan which, if applicable, shall be completed by the relevant Milestone Date;

“Milestone Payment” a payment identified in Section 5 to be made following the issue of a Milestone Achievement Certificate;

“Occasion of Tax Non-Compliance” means:

- (a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:
 - i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
 - ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- (b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud evasion.

“Open Book Data” means complete and accurate financial and non-financial information which is sufficient to enable DFID to verify the Charges already paid or payable and Charges forecast to be paid during the Term, including details and all assumptions relating to costs.

“Overhead” means those amounts which are intended to recover a proportion of the Supplier’s or the Sub-Contractor’s (as the context requires) indirect corporate costs;

“Parties” and **“Party”** have the meanings respectively given in Section 1 of this Contract;

“Performance Indicators” means the Key Performance Indicators and the subsidiary Performance Indicators;

“Personal Data” means personal data (as defined in the Data Protection Act 1998) which is Processed by the Supplier or any Sub-Contractor on behalf of DFID or a Central Government Body pursuant to or in connection with this Contract;

“Process” has the meaning given to it under the Data Protection Legislation but, for the purposes of this Contract, it shall include both manual and automatic processing and **“Processing”** and **“Processed”** shall be interpreted accordingly;

“Processor Personnel” means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement.

“Programme Name” means the name given to the programme to which this Contract relates as identified in Section 1 (Form of Contract);

“Prohibited Act” has the meaning;

- (a) to directly or indirectly offer, promise or give any person working for or engaged by DFID a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;
- (c) an offence:
 - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);

- (ii) under legislation or common law concerning fraudulent acts; or
- (iii) defrauding, attempting to defraud or conspiring to defraud DFID; or
- (d) any activity, practice or conduct which would constitute one of the offences listed under
- (e) above if such activity, practice or conduct had been carried out in the UK;

"Project" means a set of co-ordinated activities, with definite starting and finishing points, undertaken by an individual or team to meet specific objectives within defined time, cost and performance parameters

"Project Officer" means the person named in Section 4 who is responsible for issuing instructions and dealing with all correspondence in connection with the technical aspects of the Contract;

"Project Specific IPRs" means:

- a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Contract and updates and amendments of these items including (but not limited to) database schema; and/or
- b) IPR in or arising as a result of the performance of the Supplier's obligations under this Contract and all updates and amendments to the same,

but shall not include the Supplier Background IPR;

"Projected Profit Margin" means the profit the Supplier expects to achieve over the Term as set out in Schedule 5 (Schedule of Costs);

"Protective Measures": appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

"Register" means a register which sets out full details of:

- (a) any assets used by the Supplier in connection with the provision of the Services, including details of:
 - (i) make, model and asset number;
 - (ii) ownership and status as whether the assets are used exclusively for the provision of the Services;
 - (iii) condition and physical location; and
 - (iv) use (including technical specifications); and
- (b) Sub-Contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;

"Regulations" means the Public Contracts Regulations 2015 as amended or replaced from time to time;

"Regulatory Bodies" means those government departments, regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of DFID and "Regulatory Body" shall be construed accordingly;

"Relevant Requirements" all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;

"Relevant Tax Authority" means HM Revenue & Customs, or, if applicable, a Tax Authority in the jurisdiction in which the Supplier is established.

"Relevant Transfer" means a transfer of employment to which the Employment Regulations applies;

"Relevant Transfer Date" means, in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;

"Replacement Services" any services which are the same as or substantially similar to any of the Services and which DFID receives in substitution for any of the Services following the expiry or termination or partial termination of this Contract, whether those services are provided by DFID internally and/or by any third party;

"Replacement Sub-Contractor" means a Sub-Contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any Sub-Contractor of any such Sub-Contractor);

"Replacement Supplier" any third party service provider of Replacement Services appointed by DFID from time to time;

“Request for Information” a request for information or an apparent request under the FOIA, the Environmental Information Regulations and associated codes of practice;

“Security Policy” means HMG’s security policy, as updated periodically by the Cabinet Office, which can be accessed at <https://www.gov.uk/government/collections/government-security> , or as notified to the Supplier from time to time;

“Service Transfer” means any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-Contractor to a Replacement Supplier or a Replacement Sub-Contractor;

“Service Transfer Date” means the date of a Service Transfer;

“Services” means the services set out in the Terms of Reference (Section 3).

“Sexual Abuse” means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions, and all sexual activity with someone under the age of 18, regardless of local age of majority or consent under the laws of the territory in which it takes place and regardless of any mistaken belief (by the relevant individual) as to the age of a child;

“Sexual Exploitation” means any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes. Includes profiting monetarily, socially, or politically from sexual exploitation of another;

“Sexual Harassment” means unwelcome sexual advances (also but not exclusively without touching). It includes requests for sexual favours, or other verbal or physical behaviour of a sexual nature, which may create a hostile or offensive environment.

“Sites” any premises (including DFID premises, the Supplier’s premises or third party premises):

(a) from, to or at which:

(i) the Services are (or are to be) provided; or

(ii) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or

(b) where:

(i) any part of the Supplier System is situated;

(ii) any physical interface with DFID System takes place;

“Software” Specially Written Software, Supplier Software and Third Party Software;

“Specially Written Software” means any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-Contractor or other third party on behalf of the Supplier) specifically for the purposes of this Contract, including any modifications, configuration, customisation, or enhancements to Supplier Software or Third Party Software created specifically for the purposes of this Contract;

“Staffing Information” means in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as DFID may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement, gender and place of work;
- (b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries, bonuses and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and

- (j) any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations;

“Staff Vetting Procedure” means HMG’s procedures and departmental policies for the vetting of Personnel whose role will involve the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measures, including, but not limited to, the provisions of the Official Secrets Act 1911 to 1989.

“Sub-Contract” means any contract or agreement (or proposed contract or agreement) to which a third party:

- a) provides the Services (or any part of them);
- b) provides facilities or goods and services necessary for the provision of the Services (or any part of them); and/or
- c) is responsible for the management, direction or control of the provision of the Services (or any part of them);

“Sub-Contractor” means any person other than the Supplier, who is a party to a Sub-Contract and the servants and agents of that person;

“Sub-processor”: any third Party appointed to process Personal Data on behalf of that Processor related to this Agreement.

“Successor Body” means a body which is not a Central Government Body or if a body which is not a Central Government Body succeeds DFID;

“Supplier” means the person(s), partnership(s) or company (ies) with whom this Contract is placed and as identified in Section 1 (Form of Contract);

“Supplier Background IPRs” means;

- (a) Intellectual Property Rights owned by the Supplier before the Effective Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or
- (b) Intellectual Property Rights created by the Supplier independently of this Agreement, which in each case is or will be used before or during the Term for designing, testing implementing or providing the Services but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software;

“Supplier Personnel” means any person (including Key Personnel) instructed pursuant to this Contract to undertake any of the Supplier's obligations under this Contract, including the Supplier's employees, agents and Sub-Contractors.

“Supplier Provider” means persons engaged and/or controlled by or on behalf of the Supplier pursuant to any activities undertaken by the Supplier under this Agreement.

“Supplier Software” means any software which is proprietary to the Supplier (or an Affiliate of the Supplier which is or will be used by the Supplier or any Sub-Contractor for the purposes of providing the Services or is embedded in and in respect of such other software as required to be licensed in order for DFID to receive the benefit of and/or make use of the Services;

“Supplier System” the information and communications technology system used by the Supplier in implementing and performing the Services including the Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding DFID System);

“Tender” means the tender submitted by the Supplier to DFID a copy of which is annexed or referred to in Schedule 4 (Tender);

“Term” means the term of this Contract from the Commencement Date until the Expiry Date;

“Termination Notice” means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract on a specified date and setting out the grounds for termination;

“Third Party IPRs” means Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software;

“Third Party Software” means any software which is proprietary to any third party (other than an Affiliate of the Supplier) or any open source which is or will be used by the Supplier for the purposes of providing the Services)

“Transferring DFID Employees” those employees of DFID to whom the Employment Regulations will apply on the Relevant Transfer Date;

“Transferring Former Supplier Employees” in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date;

“Transferring Supplier Employees” means those employees of the Supplier and/or the Supplier’s Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date;

“Valid Invoice” means an invoice issued by the Supplier to DFID and containing the information set out in Clause 22.4;

"Variation" means a properly executed variation to the Contract in compliance with Clause 38;

"Variation Procedure" means the procedure set out in Clause 38;

"VAT" means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and

"Working Day" means any day other than a Saturday, Sunday or public holiday in England and Wales.

SCHEDULE 2: STAFF TRANSFER

1. DEFINITIONS

In this Schedule 2, the following definitions shall apply:

“Admission Agreement”	An admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into by the Supplier where it agrees to participate in the Schemes in respect of the Services;
“Eligible Employee”	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement;
“Fair Deal Employees”	those Transferring DFID Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal (and, in the event that Part B of this Schedule 2 applies, any Transferring Former Supplier Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal);
“Former Supplier”	a supplier supplying services to DFID before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any Sub-Contractor of such supplier (or any Sub-Contractor of any such Sub-Contractor);
“New Fair Deal”	the revised Fair Deal position set out in the HM Treasury guidance: <i>“Fair Deal for staff pensions: staff transfer from central government”</i> issued in October 2013 including any amendments to that document immediately prior to the Relevant Transfer Date;
“Notified Sub-Contractor”	a Sub-Contractor identified in the Annex to this Schedule 2 to whom Transferring DFID Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
“Replacement Sub-Contractor”	a Sub-Contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any Sub-Contractor of any such Sub-Contractor);
“Relevant Transfer”	a transfer of employment to which the Employment Regulations applies;
“Relevant Transfer Date”	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
“Schemes”	the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 2 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; and the Designated Stakeholder Pension Scheme and “alpha” introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014;
“Service Transfer”	any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-Contractor to a Replacement Supplier or a Replacement Sub-Contractor;
“Service Transfer Date”	the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;

“Supplier's Final Supplier Personnel List”	a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Service Transfer Date;
“Supplier's Provisional Supplier Personnel List”	a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;
“Transferring DFID Employees”	those employees of DFID to whom the Employment Regulations will apply on the Relevant Transfer Date;
“Transferring Former Supplier Employees”	in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date; and
“Transferring Supplier Employees”	those employees of the Supplier and/or the Supplier's Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date.

2. INTERPRETATION

Where a provision in this Schedule 2 imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-Contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to DFID, Former Supplier, Replacement Supplier or Replacement Sub-Contractor, as the case may be.

PART A

TRANSFERRING DFID EMPLOYEES AT COMMENCEMENT OF SERVICES

1. RELEVANT TRANSFERS

- 1.1 DFID and the Supplier agree that:
- 1.1.1 the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring DFID Employees; and
 - 1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between DFID and the Transferring DFID Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Notified Sub-Contractor and each such Transferring DFID Employee.
- 1.2 DFID shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring DFID Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) DFID; and (ii) the Supplier and/or any Notified Sub-Contractor (as appropriate).

2. DFID INDEMNITIES

- 2.1 Subject to Paragraph 2.2, DFID shall indemnify the Supplier and any Notified Sub-Contractor against any Employee Liabilities arising from or as a result of:
- 2.1.1 any act or omission by DFID in respect of any Transferring DFID Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring DFID Employee occurring before the Relevant Transfer Date;
 - 2.1.2 the breach or non-observance by DFID before the Relevant Transfer Date of:
 - (a) any collective agreement applicable to the Transferring DFID Employees; and/or
 - (b) any custom or practice in respect of any Transferring DFID Employees which DFID is contractually bound to honour;
 - 2.1.3 any claim by any trade union or other body or person representing the Transferring DFID Employees arising from or connected with any failure by DFID to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;
 - 2.1.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring DFID Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - (b) in relation to any employee who is not a Transferring DFID Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from DFID to the Supplier and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.
 - 2.1.5 a failure of DFID to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring DFID Employees arising before the Relevant Transfer Date;

- 2.1.6 any claim made by or in respect of any person employed or formerly employed by DFID other than a Transferring DFID Employee for whom it is alleged the Supplier and/or any Notified Sub-Contractor as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and
 - 2.1.7 any claim made by or in respect of a Transferring DFID Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring DFID Employee relating to any act or omission of DFID in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor (whether or not a Notified Sub-Contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:
- 2.2.1 arising out of the resignation of any Transferring DFID Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier and/or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or
 - 2.2.2 arising from the failure by the Supplier or any Sub-Contractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified by DFID as a Transferring DFID Employee claims, or it is determined in relation to any person who is not identified by DFID as a Transferring DFID Employee, that his/her contract of employment has been transferred from DFID to the Supplier and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 2.3.1 the Supplier shall, or shall procure that the Notified Sub-Contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to DFID; and
 - 2.3.2 DFID may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of receipt of the notification by the Supplier and/or any Notified Sub-Contractor, or take such other reasonable steps as DFID considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.4 If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by DFID, the Supplier shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3.2:
- 2.5.1 no such offer of employment has been made;
 - 2.5.2 such offer has been made but not accepted; or
 - 2.5.3 the situation has not otherwise been resolved,
- the Supplier and/or any Notified Sub-Contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Supplier and/or any Notified Sub-Contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in applicable Law, DFID shall indemnify the Supplier and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or procures that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in Paragraph 2.6:
- 2.7.1 shall not apply to:
 - (a) any claim for:
 - (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

- (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
 - in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or
 - (b) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and
- 2.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Supplier and/or any Notified Sub-Contractor (as appropriate) to DFID within 6 months of the Commencement Date.
- 2.8 If any such person as is referred to in Paragraph 2.3 is neither re-employed by DFID nor dismissed by the Supplier and/or any Notified Sub-Contractor within the time scales set out in Paragraph 2.5 such person shall be treated as having transferred to the Supplier and/or any Notified Sub-Contractor and the Supplier shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under applicable Law.

3. SUPPLIER INDEMNITIES AND OBLIGATIONS

- 3.1 Subject to Paragraph 3.2 the Supplier shall indemnify DFID against any Employee Liabilities arising from or as a result of:
- 3.1.1 any act or omission by the Supplier or any Sub-Contractor in respect of any Transferring DFID Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring DFID Employee whether occurring before, on or after the Relevant Transfer Date;
 - 3.1.2 the breach or non-observance by the Supplier or any Sub-Contractor on or after the Relevant Transfer Date of:
 - (a) any collective agreement applicable to the Transferring DFID Employees; and/or
 - (b) any custom or practice in respect of any Transferring DFID Employees which the Supplier or any Sub-Contractor is contractually bound to honour;
 - 3.1.3 any claim by any trade union or other body or person representing any Transferring DFID Employees arising from or connected with any failure by the Supplier or any Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
 - 3.1.4 any proposal by the Supplier or a Sub-Contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring DFID Employees to their material detriment on or after their transfer to the Supplier or the relevant Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring DFID Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
 - 3.1.5 any statement communicated to or action undertaken by the Supplier or any Sub-Contractor to, or in respect of, any Transferring DFID Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with DFID in writing;
 - 3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring DFID Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - (b) in relation to any employee who is not a Transferring DFID Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from DFID to the Supplier or a Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
 - 3.1.7 a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring DFID Employees in respect of the period from (and including) the Relevant Transfer Date;

- 3.1.8 any claim made by or in respect of a Transferring DFID Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring DFID Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from DFID's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- 3.1.9 a failure by the Supplier or any Sub-Contractor to comply with its obligations under Paragraph 2.8 above.
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of DFID whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from DFID's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of the Transferring DFID Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between DFID and the Supplier.

4. INFORMATION

The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to DFID in writing such information as is necessary to enable DFID to carry out its duties under regulation 13 of the Employment Regulations. DFID shall promptly provide to the Supplier and each Notified Sub-Contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

5. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

- 5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
- 5.2 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by DFID relating to pensions in respect of any Transferring DFID Employee as set down in:
 - 5.2.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
 - 5.2.2 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
 - 5.2.3 HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
 - 5.2.4 the New Fair Deal.
- 5.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the Variation Procedure.

6. PENSIONS

The Supplier shall, and/or shall procure that each of its Sub-Contractors shall, comply with the pensions provisions in the following Annex.

ANNEX TO PART A: PENSIONS

1. PARTICIPATION

- 1.1 The Supplier undertakes to enter into the Admission Agreement.
- 1.2 The Supplier and DFID:
 - 1.2.1 undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;
 - 1.2.2 agree that the arrangements under paragraph 1.1 of this Annex include the body responsible for the Schemes notifying DFID if the Supplier breaches any obligations it has under the Admission Agreement;
 - 1.2.3 agree, notwithstanding Paragraph 1.2.2 of this Annex, the Supplier shall notify DFID in the event that it breaches any obligations it has under the Admission Agreement and when it intends to remedy such breaches; and
 - 1.2.4 agree that DFID may terminate this Contract in the event that the Supplier breaches the Admission Agreement:
 - (a) and that breach is not capable of being remedied; or
 - (b) where such breach is capable of being remedied, the Supplier fails to remedy such breach within a reasonable time and in any event within 28 days of a notice from DFID giving particulars of the breach and requiring the Supplier to remedy it.
- 1.3 The Supplier shall bear its own costs and all costs that DFID reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes including without limitation current civil service pensions administrator on-boarding costs.

2. FUTURE SERVICE BENEFITS

- 2.1 The Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of Schemes for service from (and including) the Relevant Transfer Date.
- 2.2 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to DFID, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by DFID in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes on the date the Eligible Employees ceased to participate in the Schemes.
- 2.3 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

3. FUNDING

- 3.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 3.2 The Supplier shall indemnify and keep indemnified DFID on demand against any claim by, payment to, or loss incurred by, the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

4. PROVISION OF INFORMATION

The Supplier and DFID respectively undertake to each other:

- 4.1 to provide all information which the other Party may reasonably request concerning matters referred to in this Annex and set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
- 4.2 not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

5. INDEMNITY

The Supplier undertakes to DFID to indemnify and keep indemnified DFID on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

6. EMPLOYER OBLIGATION

The Supplier shall comply with the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff.

7. SUBSEQUENT TRANSFERS

The Supplier shall:

- 7.1 not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the Service Transfer Date;
- 7.2 provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or DFID may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal; and
- 7.3 for the applicable period either:
 - 7.3.1 after notice (for whatever reason) is given, in accordance with the other provisions of this Contract, to terminate the Agreement or any part of the Services; or
 - 7.3.2 after the date which is two (2) years prior to the date of expiry of this Contract,
ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or DFID, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of DFID (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

8. BULK TRANSFER

- 8.1 Where the Supplier has set up a broadly comparable pension scheme in accordance with the provisions of paragraph 2.2 above of this Annex, the Supplier agrees to:
 - 8.1.1 fully fund any such broadly comparable pension scheme in accordance with the funding requirements set by that broadly comparable pension scheme's actuary or by the Government Actuary's Department;
 - 8.1.2 instruct any such broadly comparable pension scheme's actuary to, and to provide all such co-operation and assistance in respect of any such broadly comparable pension scheme as the Replacement Supplier and/or DFID may reasonably require, to enable the Replacement Supplier to participate in the Schemes in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;
 - 8.1.3 allow, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such broadly comparable pension scheme into the Schemes on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal, for the avoidance of doubt should the amount offered by the broadly comparable pension scheme be less than the amount required by the Schemes to fund day for day service ("the Shortfall"), the Supplier agrees to pay the Shortfall to the Schemes; and
 - 8.1.4 indemnify DFID on demand for any failure to pay the Shortfall as required under Paragraph 8.1.3 above.

PART B

TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF SERVICES

9. RELEVANT TRANSFERS

- 9.1 DFID and the Supplier agree that:
- 9.1.1 the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and
 - 9.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or Notified Sub-Contractor and each such Transferring Former Supplier Employee.
- 9.2 Subject to Paragraph 6, DFID shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier shall make, and DFID shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.

10. FORMER SUPPLIER INDEMNITIES

- 10.1 Subject to Paragraphs 2.2 and 6, DFID shall procure that each Former Supplier shall indemnify the Supplier and any Notified Sub-Contractor against any Employee Liabilities arising from or as a result of:
- 10.1.1 any act or omission by the Former Supplier in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee arising before the Relevant Transfer Date;
 - 10.1.2 the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Former Supplier Employees; and/or
 - (b) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;
 - 10.1.3 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
 - 10.1.4 a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;
 - 10.1.5 any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Sub-Contractor as appropriate may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and

- 10.1.6 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.
- 10.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:
- 10.2.1 arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or
- 10.2.2 arising from the failure by the Supplier and/or any Sub-Contractor to comply with its obligations under the Employment Regulations.
- 10.3 If any person who is not identified by DFID as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by DFID as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 10.3.1 the Supplier shall, or shall procure that the Notified Sub-Contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to DFID and, where required by DFID, to the Former Supplier; and
- 10.3.2 the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier and/or the Notified Sub-Contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 10.4 If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or DFID, the Supplier shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 10.5 If by the end of the 15 Working Day period specified in Paragraph 2.3.2:
- 10.5.1 no such offer of employment has been made;
- 10.5.2 such offer has been made but not accepted; or
- 10.5.3 the situation has not otherwise been resolved,
- the Supplier and/or any Notified Sub-Contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 10.6 Subject to the Supplier and/or any Notified Sub-Contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, DFID shall procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 10.7 The indemnity in Paragraph 2.6:
- 10.7.1 shall not apply to:
- (a) any claim for:
- (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

- in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or
 - (b) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and
- 10.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Supplier and/or any Notified Sub-Contractor (as appropriate) to DFID and, if applicable, the Former Supplier, within 6 months of the Commencement Date.
- 10.8 If any such person as is described in Paragraph 2.3 is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Notified Sub-Contractor within the time scales set out in Paragraph 2.5, such person shall be treated as having transferred to the Supplier or Notified Sub-Contractor and the Supplier shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under the Law.

11. SUPPLIER INDEMNITIES AND OBLIGATIONS

- 11.1 Subject to Paragraph 3.2, the Supplier shall indemnify DFID and/or the Former Supplier against any Employee Liabilities arising from or as a result of:
- 11.1.1 any act or omission by the Supplier or any Sub-Contractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date;
 - 11.1.2 the breach or non-observance by the Supplier or any Sub-Contractor on or after the Relevant Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Former Supplier Employee; and/or
 - (b) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub-Contractor is contractually bound to honour;
 - 11.1.3 any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
 - 11.1.4 any proposal by the Supplier or a Sub-Contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
 - 11.1.5 any statement communicated to or action undertaken by the Supplier or a Sub-Contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with DFID and/or the Former Supplier in writing;
 - 11.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a Sub-Contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
 - 11.1.7 a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date;

- 11.1.8 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- 11.1.9 a failure by the Supplier or any Sub-Contractor to comply with its obligations under Paragraph 2.8 above.
- 11.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.
- 11.3 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

12. INFORMATION

The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to DFID and/or at DFID's direction, the Former Supplier, in writing such information as is necessary to enable DFID and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. Subject to Paragraph 6, DFID shall procure that the Former Supplier shall promptly provide to the Supplier and each Notified Sub-Contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

13. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

- 13.1 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by DFID relating to pensions in respect of any Transferring Former Supplier Employee as set down in:
 - 13.1.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
 - 13.1.2 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
 - 13.1.3 HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
 - 13.1.4 the New Fair Deal.
- 13.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Variation Procedure.

14. PROCUREMENT OBLIGATIONS

Notwithstanding any other provisions of this Part B, where in this Part B DFID accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that DFID's contract with the Former Supplier contains a contractual right in that regard which DFID may enforce, or otherwise so that it requires only that DFID must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

15. PENSIONS

The Supplier shall, and shall procure that each Sub-Contractor shall, comply with the pensions provisions in the following Annex.

ANNEX TO PART B: PENSIONS

1. PARTICIPATION

- 1.1 The Supplier undertakes to enter into the Admission Agreement.
- 1.2 The Supplier and DFID:
 - 1.2.1 undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;
 - 1.2.2 agree that the arrangements under paragraph 1.1 of this Annex include the body responsible for the Schemes notifying DFID if the Supplier breaches any obligations it has under the Admission Agreement;
 - 1.2.3 agree, notwithstanding Paragraph 1.2.2 of this Annex, the Supplier shall notify DFID in the event that it breaches any obligations it has under the Admission Agreement and when it intends to remedy such breaches; and
 - 1.2.4 agree that DFID may terminate this Contract for material default in the event that the Supplier breaches the Admission Agreement:
 - (a) and that breach is not capable of being remedied; or
 - (b) where such breach is capable of being remedied, the Supplier fails to remedy such breach within a reasonable time and in any event within 28 days of a notice from DFID giving particulars of the breach and requiring the Supplier to remedy it.
- 1.3 The Supplier shall bear its own costs and all costs that DFID reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes including without limitation current civil service pensions administrator on-boarding costs.

2. FUTURE SERVICE BENEFITS

- 2.1 If the Supplier is rejoining the Schemes for the first time, the Supplier shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 2.2 If staff have already been readmitted to the Schemes, the Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 2.3 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to DFID, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by DFID in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes on the date the Eligible Employees ceased to participate in the Schemes.
- 2.4 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

3. FUNDING

- 3.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 3.2 The Supplier shall indemnify and keep indemnified DFID on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

4. PROVISION OF INFORMATION

The Supplier and DFID respectively undertake to each other:

- 4.1 to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
- 4.2 not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

5. INDEMNITY

The Supplier undertakes to DFID to indemnify and keep indemnified DFID on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

6. EMPLOYER OBLIGATION

The Supplier shall comply with the requirements of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff.

7. SUBSEQUENT TRANSFERS

The Supplier shall:

- 7.1 not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the Service Transfer Date;
- 7.2 provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or DFID may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and
- 7.3 for the applicable period either
 - 7.3.1 after notice (for whatever reason) is given, in accordance with the other provisions of this Contract, to terminate the Agreement or any part of the Services; or
 - 7.3.2 after the date which is two (2) years prior to the date of expiry of this Contract,
ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or DFID, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of DFID (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

8. BULK TRANSFER

- 8.1 Where the Supplier has set up a broadly comparable pension scheme in accordance with the provisions of paragraph 2.2 above of this Annex, the Supplier agrees to:
 - 8.1.1 fully fund any such broadly comparable pension scheme in accordance with the funding requirements set by that broadly comparable pension scheme's actuary or by the Government Actuary's Department;
 - 8.1.2 instruct any such broadly comparable pension scheme's actuary to, and to provide all such co-operation and assistance in respect of any such broadly comparable pension scheme as the Replacement Supplier and/or DFID may reasonably require, to enable the Replacement Supplier to participate in the Schemes in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;
 - 8.1.3 allow, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such broadly comparable pension scheme into the Schemes on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal, for the avoidance of doubt should the amount offered by the broadly comparable pension scheme be less than the amount required by the Schemes to fund day for day service ("the Shortfall"), the Supplier agrees to pay the Shortfall to the Schemes; and
 - 8.1.4 indemnify DFID on demand for any failure to pay the Shortfall as required under Paragraph 8.1.3 above.

PART C

NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

1. PROCEDURE IN THE EVENT OF TRANSFER

- 1.1 DFID and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of DFID and/or any Former Supplier.
- 1.2 If any employee of DFID and/or a Former Supplier claims, or it is determined in relation to any employee of DFID and/or a Former Supplier, that his/her contract of employment has been transferred from DFID and/or the Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
 - 1.2.1 the Supplier shall, and shall procure that the relevant Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to DFID and, where required by DFID, give notice to the Former Supplier; and
 - 1.2.2 DFID and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Supplier or the Sub-Contractor (as appropriate) or take such other reasonable steps as DFID or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3 If an offer referred to in Paragraph 1.2.2 is accepted (or if the situation has otherwise been resolved by DFID and/or the Former Supplier), the Supplier shall, or shall procure that the Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4 If by the end of the fifteen (15) Working Day period specified in Paragraph 1.2.2:
 - 1.4.1 no such offer of employment has been made;
 - 1.4.2 such offer has been made but not accepted; or
 - 1.4.3 the situation has not otherwise been resolved,the Supplier and/or the Sub-Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

2. INDEMNITIES

- 2.1 Subject to the Supplier and/or the relevant Sub-Contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, DFID shall:
 - 2.1.1 indemnify the Supplier and/or the relevant Sub-Contractor against all Employee Liabilities arising out of the termination of the employment of any employees of DFID referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
 - 2.1.2 subject to paragraph 3, procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-Contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the relevant Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.2 If any such person as is described in Paragraph 1.2 is neither re-employed by DFID and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-Contractor within the fifteen (15) Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Supplier and/or the Sub-Contractor (as appropriate) and the Supplier shall, or shall procure that the Sub-Contractor shall, comply with such obligations as may be imposed upon it under Law.
- 2.3 Where any person remains employed by the Supplier and/or any Sub-Contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-Contractor and the Supplier shall indemnify DFID and any Former Supplier, and shall procure that the Sub-Contractor shall indemnify DFID and any Former Supplier, against

any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-Contractor.

2.4 The indemnities in Paragraph 2.1:

2.4.1 shall not apply to:

- (a) any claim for:
 - (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or
- (b) any claim that the termination of employment was unfair because the Supplier and/or any Sub-Contractor neglected to follow a fair dismissal procedure; and

2.4.2 shall apply only where the notification referred to in Paragraph 1.2.1 is made by the Supplier and/or any Sub-Contractor to DFID and, if applicable, Former Supplier within 6 months of the Commencement Date.

3. PROCUREMENT OBLIGATIONS

Where in this Part C DFID accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that DFID's contract with the Former Supplier contains a contractual right in that regard which DFID may enforce, or otherwise so that it requires only that DFID must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

PART D

EMPLOYMENT EXIT PROVISIONS

1. PRE-SERVICE TRANSFER OBLIGATIONS

- 1.1 The Supplier agrees that within twenty (20) Working Days of the earliest of:
- 1.1.1 receipt of a notification from DFID of a Service Transfer or intended Service Transfer;
 - 1.1.2 receipt of the giving of notice of early termination or any Partial Termination of this Contract;
 - 1.1.3 the date which is twelve (12) months before the end of the Term; and
 - 1.1.4 receipt of a written request of DFID at any time (provided that DFID shall only be entitled to make one such request in any six (6) month period),
- it shall provide in a suitably anonymised format so as to comply with the DPA, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by DFID.
- 1.2 At least thirty (30) Working Days prior to the Service Transfer Date, the Supplier shall provide to DFID or at the direction of DFID to any Replacement Supplier and/or any Replacement Sub-Contractor:
- 1.2.1 the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
 - 1.2.2 the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).
- 1.3 DFID shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-Contractor.
- 1.4 The Supplier warrants, for the benefit of DFID, any Replacement Supplier, and any Replacement Sub-Contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
- 1.5 From the date of the earliest event referred to in Paragraph 1.1, the Supplier agrees, that it shall not, and agrees to procure that each Sub-Contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of DFID (not to be unreasonably withheld or delayed):
- 1.5.1 replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
 - 1.5.2 make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment);
 - 1.5.3 increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
 - 1.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
 - 1.5.5 increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
 - 1.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-Contractor shall promptly notify, DFID or, at the direction of DFID, any Replacement Supplier and any Replacement Sub-Contractor of any notice to terminate employment given by the Supplier or

relevant Sub-Contractor or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect.

- 1.6 During the Term, the Supplier shall provide, and shall procure that each Sub-Contractor shall provide, to DFID any information DFID may reasonably require relating to the manner in which Services are organised, which shall include:
 - 1.6.1 the numbers of employees engaged in providing the Services;
 - 1.6.2 the percentage of time spent by each employee engaged in providing the Services;
 - 1.6.3 the extent to which each employee qualifies for membership of any of the Schemes or any broadly comparable scheme set up pursuant to the provisions of paragraph 2.2 of the Annex (Pensions) to Part A of this Schedule 2 or paragraph 2.3 of the Annex (Pensions) to Part B of this Schedule 2 (as appropriate); and
 - 1.6.4 a description of the nature of the work undertaken by each employee by location.
- 1.7 The Supplier shall provide, and shall procure that each Sub-Contractor shall provide, all reasonable cooperation and assistance to DFID, any Replacement Supplier and/or any Replacement Sub-Contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-Contractor shall provide, to DFID or, at the direction of DFID, to any Replacement Supplier and/or any Replacement Sub-Contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:
 - 1.7.1 the most recent month's copy pay slip data;
 - 1.7.2 details of cumulative pay for tax and pension purposes;
 - 1.7.3 details of cumulative tax paid;
 - 1.7.4 tax code;
 - 1.7.5 details of any voluntary deductions from pay; and
 - 1.7.6 bank/building society account details for payroll purposes.

2. EMPLOYMENT REGULATIONS EXIT PROVISIONS

- 2.1 DFID and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Contract or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-Contractor. Such change in the identity of the Supplier of such Services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. DFID and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-Contractor (as the case may be) and each such Transferring Supplier Employee.
- 2.2 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (but not including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-Contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-Contractor.
- 2.3 Subject to Paragraph 2.4, where a Relevant Transfer occurs the Supplier shall indemnify DFID and/or the Replacement Supplier and/or any Replacement Sub-Contractor against any Employee Liabilities arising from or as a result of:

- 2.3.1 any act or omission of the Supplier or any Sub-Contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date;
- 2.3.2 the breach or non-observance by the Supplier or any Sub-Contractor occurring on or before the Service Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Supplier Employees; and/or
 - (b) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-Contractor is contractually bound to honour;
- 2.3.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
- 2.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
 - (b) in relation to any employee who is not identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to DFID and/or Replacement Supplier and/or any Replacement Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- 2.3.5 a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date;
- 2.3.6 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-Contractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List for whom it is alleged DFID and/or the Replacement Supplier and/or any Replacement Sub-Contractor may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
- 2.3.7 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by DFID and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.
- 2.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-Contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
 - 2.4.1 arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-Contractor to occur in the period on or after the Service Transfer Date; or
 - 2.4.2 arising from the Replacement Supplier's failure, and/or Replacement Sub-Contractor's failure, to comply with its obligations under the Employment Regulations.
- 2.5 If any person who is not identified in the Supplier's Final Supplier Personnel List claims, or it is determined in relation to any person who is not identified in the Supplier's Final Supplier Personnel List that his/her contract of employment has been transferred from the Supplier or any Sub-Contractor to the Replacement Supplier and/or Replacement Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:
 - 2.5.1 DFID shall procure that the Replacement Supplier shall, or any Replacement Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
 - 2.5.2 the Supplier may offer (or may procure that a Sub-Contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-

Contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-Contractor, DFID shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-Contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.

2.7 If after the fifteen (15) Working Day period specified in Paragraph 2.5.2 has elapsed:

2.7.1 no such offer of employment has been made;

2.7.2 such offer has been made but not accepted; or

2.7.3 the situation has not otherwise been resolved

the Replacement Supplier and/or Replacement Sub-Contractor, as appropriate may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

2.8 Subject to the Replacement Supplier and/or Replacement Sub-Contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-Contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.9 The indemnity in Paragraph 2.8:

2.9.1 shall not apply to:

(a) any claim for:

(i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

(ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-Contractor; or

(b) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-Contractor neglected to follow a fair dismissal procedure; and

2.9.2 shall apply only where the notification referred to in Paragraph 2.5.1 is made by the Replacement Supplier and/or Replacement Sub-Contractor to the Supplier within six (6) months of the Service Transfer Date.

2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Supplier or any Sub-Contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-Contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee.

2.11 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Personnel List before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

2.11.1 the Supplier and/or any Sub-Contractor; and

2.11.2 the Replacement Supplier and/or the Replacement Sub-Contractor.

- 2.12 The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to DFID and any Replacement Supplier and/or Replacement Sub-Contractor, in writing such information as is necessary to enable DFID, the Replacement Supplier and/or Replacement Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations. DFID shall procure that the Replacement Supplier and/or Replacement Sub-Contractor, shall promptly provide to the Supplier and each Sub-Contractor in writing such information as is necessary to enable the Supplier and each Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.13 Subject to Paragraph 2.14, where a Relevant Transfer occurs DFID shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-Contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:
- 2.13.1 any act or omission of the Replacement Supplier and/or Replacement Sub-Contractor in respect of any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee;
 - 2.13.2 the breach or non-observance by the Replacement Supplier and/or Replacement Sub-Contractor on or after the Service Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List; and/or
 - (b) any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List which the Replacement Supplier and/or Replacement Sub-Contractor is contractually bound to honour;
 - 2.13.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
 - 2.13.4 any proposal by the Replacement Supplier and/or Replacement Sub-Contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List on or after their transfer to the Replacement Supplier or Replacement Sub-Contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Supplier's Final Supplier Personnel List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;
 - 2.13.5 any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-Contractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
 - 2.13.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-Contractor, to the Replacement Supplier or Replacement Sub-Contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
 - 2.13.7 a failure of the Replacement Supplier or Replacement Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List in respect of the period from (and including) the Service Transfer Date; and
 - 2.13.8 any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any

such Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations.

- 2.14 The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-Contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-Contractor (as applicable) to comply with its obligations under the Employment Regulations.

ANNEX TO SCHEDULE 2: LIST OF NOTIFIED SUB-CONTRACTORS

No Sub-contractors

SCHEDULE 3: INSURANCE REQUIREMENTS

1.OBLIGATION TO MAINTAIN INSURANCES

- 1.1 Without prejudice to its obligations to DFID under this Contract, including its indemnity obligations, the Supplier shall for the periods specified in this Schedule 2 take out and maintain, or procure the taking out and maintenance of the insurances as set out in Annex 1 (Required Insurances) and any other insurances as may be required by applicable Law (together the “**Insurances**”). The Supplier shall ensure that each of the Insurances is effective no later than the Commencement Date.
- 1.2 The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent Contractor in respect of risks insured in the international insurance market from time to time.
- 1.3 The Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.
- 1.4 The Supplier shall ensure that the public and products liability policy shall contain an indemnity to principals clause under which DFID shall be indemnified in respect of claims made against DFID in respect of death or bodily injury or third party property damage arising out of or in connection with the Services and for which the Supplier is legally liable.

2.GENERAL OBLIGATIONS

- 2.1 Without limiting the other provisions of this Contract, the Supplier shall:
 - 2.1.1 take or procure the taking of all reasonable risk management and risk control measures in relation to the Services as it would be reasonable to expect of a prudent Contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
 - 2.1.2 promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
 - 2.1.3 hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

3.FAILURE TO INSURE

- 3.1 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
- 3.2 Where the Supplier has failed to purchase any of the Insurances or maintain any of the Insurances in full force and effect, DFID may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances, and DFID shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

4.EVIDENCE OF POLICIES

- 4.1 The Supplier shall upon the Commencement Date and within 15 Working Days after the renewal of each of the Insurances, provide evidence, in a form satisfactory to DFID, that the Insurances are in force and effect and meet in full the requirements of this Framework Schedule 2. Receipt of such evidence by DFID shall not in itself constitute acceptance by DFID or relieve the Supplier of any of its liabilities and obligations under this Agreement.

5.AGGREGATE LIMIT OF INDEMNITY

- 5.1 Where the minimum limit of indemnity required in relation to any of the Insurances is specified as being "in the aggregate":
 - 5.1.1 if a claim or claims which do not relate to this Contract are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the Supplier shall immediately submit to DFID:
 - (a) details of the policy concerned; and

- (b) its proposed solution for maintaining the minimum limit of indemnity specified; and
- 5.1.2 if and to the extent that the level of insurance cover available falls below that minimum because a claim or claims which do not relate to this Contract are paid by insurers, the Supplier shall:
 - (a) ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this Contract; or
 - (b) if the Supplier is or has reason to believe that it will be unable to ensure that insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified, immediately submit to DFID full details of the policy concerned and its proposed solution for maintaining the minimum limit of indemnity specified.

6. CANCELLATION

- 6.1 The Supplier shall notify DFID in writing at least five (5) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.

7. INSURANCE CLAIMS

- 7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Contract for which it may be entitled to claim under any of the Insurances. In the event that DFID receives a claim relating to or arising out of the Services or this Contract, the Supplier shall co-operate with DFID and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
- 7.2 Except where DFID is the claimant party, the Supplier shall give DFID notice within twenty (20) Working Days after any insurance claim in excess of £100,000 relating to or arising out of the provision of the Services or this Contract on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by DFID) full details of the incident giving rise to the claim.
- 7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from DFID any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

ANNEX 1: REQUIRED INSURANCES

PART A: THIRD PARTY PUBLIC & PRODUCTS LIABILITY INSURANCE

1.INSURED

1.1 The Supplier

2.INTEREST

2.1 To indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay as damages, including claimant's costs and expenses, in respect of accidental:

2.1.1 death or bodily injury to or sickness, illness or disease contracted by any person;

2.1.2 loss of or damage to property;

happening during the period of insurance (as specified in Paragraph 5 of this Annex 1 to this Schedule 2) and arising out of or in connection with the provision of the Services and in connection with this Contract.

3.LIMIT OF INDEMNITY

3.1 Not less than £5,000,000 in respect of any one occurrence, the number of occurrences being unlimited, but £5,000,000 any one occurrence and in the aggregate per annum in respect of products and pollution liability.

4.TERRITORIAL LIMITS

4.1.1 Global

5.PERIOD OF INSURANCE

5.1 From the Commencement Date for the Term and renewable on an annual basis unless agreed otherwise by DFID in writing.

6.COVER FEATURES AND EXTENSIONS

6.1 Indemnity to principals clause.

7.PRINCIPAL EXCLUSIONS

7.1 War and related perils.

7.2 Nuclear and radioactive risks.

7.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured during the course of their employment.

7.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.

7.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.

7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.

7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.

7.8 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

8.MAXIMUM DEDUCTIBLE THRESHOLD

8.1 N/A

PART B: PROFESSIONAL INDEMNITY INSURANCE

1.INSURED

- 1.1 The Supplier

2.INTEREST

- 2.1 To indemnify the Insured for all sums which the Insured shall become legally liable to pay (including claimants' costs and expenses) as a result of claims first made against the Insured during the Period of Insurance by reason of any negligent act, error and/or omission arising from or in connection with the provision of the Services.

3.LIMIT OF INDEMNITY

- 3.1 Not less than £10,000,000 in respect of any one claim and in the aggregate per annum.

4.TERRITORIAL LIMITS

- 4.1 Global

5.PERIOD OF INSURANCE

- 5.1 From the date of this Contract and renewable on an annual basis unless agreed otherwise by DFID in writing (a) throughout the Term or until earlier termination of this Contract and (b) for a period of 6 years thereafter.

6.COVER FEATURES AND EXTENSIONS

- 6.1 Retroactive cover to apply to any claims made policy wording in respect of this Contract or retroactive date to be no later than the Commencement Date.

7.PRINCIPAL EXCLUSIONS

- 7.1 War and related perils
7.2 Nuclear and radioactive risks

8.MAXIMUM DEDUCTIBLE THRESHOLD

- 8.1 N/A.

PART C: UNITED KINGDOM COMPULSORY INSURANCES

1.GENERAL

- 1.1 The Supplier shall meet its insurance obligations under applicable Law in full, including, UK employers' liability insurance and motor third party liability insurance.

SCHEDULE 4: TENDER

1. GENERAL

- 1.1 This Schedule 4 sets out a copy of the Supplier's Tender.
- 1.2 Subject to Clause 1.4, in addition to any other obligations on the Supplier under this Contract, the Supplier shall provide the Services in accordance with the Tender.

International Development

Department for

Abercrombie House
Eaglesham Road
EAST KILBRIDE
Glasgow
G75 8EA

Telephone: East Kilbride 01355 84 4000
Directline: 01355 84 [

File Ref: [
Date: [

Contract Amendment No: [

CONTRACT FOR: [

CONTRACT NUMBER: [

With reference to the Contract dated [], both Parties have in principle agreed to the following variation[s] to the Contract [:

[

2. [These/This amendment[s] relate[s] to [

3. Please confirm in writing by signing and returning one copy of this letter, within 15 working days of the date of signature on behalf of DFID that you accept the variation[s] set out herein.

4. The Contract, including any previous variations, shall remain effective and unaltered except as amended by this letter.

5. Words and expressions in this letter shall have the meanings given to them in the Contract.

Signed by an authorised signatory for and on behalf of the
Secretary of State
for International Development

Name: [

Position:

Signature:

Date: [

Signed by an authorised signatory for and on behalf of the Supplier

Name: [

Signature:

Date:



DFID Supply Partner Code of Conduct

Principles

DFID aims to create an inclusive culture of best practice with the delivery partners with whom it engages and which receive UK taxpayers' funds. All Supply Partners should adhere to the overarching principles of the Supply Partner Code of Conduct (hereafter "the Code").

Overarching Principles for Supply Partners

- ✓ **Act responsibly and with integrity**
- ✓ **Be transparent and accountable**
- ✓ **Seek to improve value for money**
- ✓ **Demonstrate commitment to poverty reduction and DFID priorities¹**
- ✓ **Demonstrate commitment to wider HMG priorities²**

DFID Supply Partner responsibilities

Supply Partners and their subcontractors (delivery chain partners) should ensure they have read and understood the Code and their required compliance level and seek clarification from DFID where necessary. In particular, it is important that the Supply Partners and their subcontractors (delivery chain partners) understand any risks and have systems in place to manage them. The 3 compliance levels are:

Compliance Level 1 - Supply Partners with an individual contract value of £1m or above, or two or more contracts/grants with DFID with a combined value of £5m or above;

Compliance Level 2 - Supply Partners with an individual contract value below £1m, or two or more contracts /grants with DFID with a value of less than £5m;

Compliance Level 3 - Supply Partners with an individual Contract value, or component of a Contract/Grant, with a value below the EU contracting threshold. At this level Supply Partners are required to adhere to the overarching Code principles and recognise, mitigate and manage risks. These Supply Partners will not be monitored against the contractual KPIs.

Scope

This Code forms part of DFID's standard contractual terms and conditions and full compliance and annual verification via a signed declaration, to be found at Annex 1b, is mandatory for contracted Supply Partners.

Adherence to the Code at the appropriate level is also a requirement for DFID direct and delivery chain Supply Partners in receipt of funding. DFID will monitor Supply Partners in six priority areas as set out below using a set of Key Performance Indicators (KPIs) as referenced in Annex 1a and 1b.

1. Value for Money and Governance

Key Performance Indicators KPI 1 a - c

Value for Money and financial transparency is an essential requirement of all DFID commissioned work. All Supply Partners must seek to maximise development results, whilst driving cost efficiency, throughout the life of commissioned programmes. This includes budgeting and pricing realistically and appropriately to reflect delivery requirements and levels of risk over the life of the programme. It also includes managing uncertainty and change to protect value in the often challenging environments that we work in.

Supply Partners must demonstrate that they are pursuing continuous improvement and applying stringent financial management and governance to reduce waste and improve efficiency in their internal operations and within the delivery chain. DFID expects Supply Partners to demonstrate openness and honesty and to be realistic about capacity and capability at all times, accepting accountability and responsibility for performance along the full delivery chain, in both every-day and exceptional circumstances.

Specific requirements include:

- ✓ Provision of relevant VfM and governance policies and a description of how these are put into practice to meet DFID requirements (e.g. Codes on fraud and corruption, due diligence);
- ✓ A transparent, open book approach, which enables scrutiny of value for money;
- ✓ Strict adherence to all UK and in-country government tax requirements;
- ✓ Processes for timely identification and resolution of issues and for sharing lessons learned which might be requested by DFID at any time.

2. Ethical Behaviour

Key Performance Indicators KPI 2 a- f

DFID Supply Partners and their delivery chain partners act on behalf of the UK government and interact globally with country governments, other aid donors and their delivery partners, many stakeholders including citizens and directly and indirectly with aid beneficiaries. These interactions must therefore meet the highest standards of ethical and professional behaviour in order to uphold the reputation of the UK government.

Arrangements and relationships entered into, whether with or on behalf of DFID, must be free from bias, conflict of interest or the undue influence of others. Particular care must be taken by Supply Partner and delivery chain staff who:

- a) are directly involved in the management of a programme or procurement of services; or
- b) who engage with i) frontline DFID staff ii) other deliverers of aid iii) beneficiaries (of aid)

Where those in a) and b) could be susceptible to undue negative or detrimental influence.

Supply Partners and their delivery chain partners must declare to DFID where there may be instances or allegations of previous unethical behaviour by an existing or potential staff member or where there is a known or suspected conflict of interest. Where a potential or existing staff member has been employed by DFID or the Crown in the

¹ <https://www.gov.uk/government/organisations/department-for-international-development/about#priorities>

² <https://www.gov.uk/government/organisations/hm-treasury/about#priorities>

preceding two years Supply Partners and their delivery chain partner must provide proof of compliance with the HMG approval requirements under the Business Appointment Rules.

Supply Partners and their delivery chain partners must have the following policies and procedures in place:

- ✓ Development and proof of application and embedding of a Staff Recruitment, Management and Retention policy (which must address circumstances where there may be potential or actual conflict of interest and embedding of a Whistleblowing Policy)
- ✓ Ongoing monitoring of potential or existing personal, business or professional conflict of interest and their mitigation and management
- ✓ Ethical training for every staff member and staff updates in ethical working practices suitable to the development sector (e.g. UN Global Compact principles) including awareness of modern day slavery and human rights abuses
- ✓ Procedures setting out how, staff involved in DFID funded business, can immediately report all suspicions or allegations of aid diversion, fraud, money laundering or counter terrorism finance to the DFID Counter Fraud and Whistleblowing Unit (CFWU) at reportingconcerns@dfid.gov.uk or on +44(0)1355 843747.

3. Transparency and Delivery Chain Management

Key Performance Indicators KPI 3 a – f

DFID requires full delivery chain transparency from all Supply Partners. All direct Supply Partners and their delivery chain partners must adhere to wider HMG policy initiatives including the support and capacity building of micro, small and medium sized enterprises (MSMEs), prompt payment, adherence to human rights and modern slavery policies and support for economic growth in developing countries.

DFID recognises the critical value that downstream delivery partners contribute. Direct Supply Partners must engage their delivery chain partners in a manner that is consistent with DFID's treatment of its direct Supply Partners. This includes, but is not limited to: appropriate pricing of services; fiduciary and financial risk management processes; applying transparent and responsive measures where delivery chain partners underperform against the KPI areas; taking a zero tolerance approach to tax evasion, corruption, bribery and fraud in subsequent service delivery or in partnership agreements. Direct Supply Partners must cascade the principles of the Code throughout their delivery chain to ensure DFID ethical behaviour standards are embedded and maintained.

Specific requirements for direct Supply Partners include:

- ✓ Provide assurance to DFID that the policies and practices of their delivery chain Supply Partners and affiliates comply with the Code;
- ✓ Maintaining and sharing with DFID up-to-date and accurate records of all downstream partners in receipt of DFID funds and/or DFID funded inventory or assets. This should map how funds flow from them to end beneficiaries and identify risks and potential risks along the delivery chain;
- ✓ Ensuring delivery chain partner employees are expressly notified of the DFID 'reporting concerns' mail box³ found on DFID's external website and of the circumstances in which this should be used;
- ✓ Publication of DFID funding data in accordance with the International Aid Transparency Initiative (IATI)⁴
- ✓ Supply Partners shall adhere to HMG prompt payment policy and not use restrictive exclusivity agreements with sub-partners.

³ <https://www.gov.uk/government/organisations/departments-for-international-development/about#reporting-fraud>

⁴ <http://www.aidtransparency.net/>

4. Environmental issues

Key Performance Indicators KPI 4 a – b

DFID Supply Partners must be committed to high environmental standards, recognising that DFID's activities may change the way people use and rely on the environment, or may affect or be affected by environmental conditions. Supply Partners must demonstrate they have taken sufficient steps to protect the local environment and community they work in, and to identify environmental risks that are imminent, significant or could cause harm or reputational damage to DFID.

Commitment to environmental sustainability may be demonstrated by:

- ✓ Formal environmental safeguard policies in place;
- ✓ Publication of environmental performance reports on a regular basis
- ✓ Membership or signature of relevant environmental Codes, both directly and within the delivery chain such as conventions, standards or certification bodies (e.g. the Extractive Industries Transparency Initiative⁵).

5. Terrorism and Security

Key Performance Indicators KPI 5 a – d

DFID Supply Partners must implement due diligence processes to provide assurance that UK Government funding is not used in any way that contravenes the provisions of the Terrorism Act 2000, and any subsequent regulations pursuant to this Act.

DFID Supply Partners must maintain high levels of data security in accordance with the Data Protection Act 1998 and any subsequent regulations pursuant to this Act, or new Act and with the General Data Protection Regulation (Directive 95/46/EC).

Specific requirements:

- ✓ Development and proof of application and embedding of a comprehensive Terrorism and Security Policy
- ✓ Development and proof of application and embedding of personal data processing processes within a Data Protection Policy
- ✓ DFID Supply Partners must safeguard the integrity and security of their IT and mobile communications systems in line with the HMG Cyber Essentials Scheme⁶. Award of the Cyber Essentials or Cyber Essential Plus badges would provide organisational evidence of meeting the UK Government-endorsed standard;
- ✓ All DFID Supply Partners who manage aid programmes with a digital element must adhere to the global Principles for Digital Development⁷, which sets out best practice in technology-enabled programmes
- ✓ Ensure that DFID funding is not linked to terrorist offences, terrorist activities or financing.

6. Safeguarding, Social Responsibility and Human Rights

Key Performance Indicators: KPI 6 a – d

⁵ <https://eiti.org/>

⁶ <https://www.gov.uk/government/publications/cyber-essentials-scheme-overview>

⁷ <http://digitalprinciples.org/>

Safeguarding, social responsibility and respect for human rights are central to DFID's expectations of its Supply Partners. Supply Partners must ensure that robust procedures are adopted and maintained to eliminate the risk of poor human rights practices within complex delivery chain environments funded by DFID. These practices include sexual exploitation, abuse and harassment; all forms of child abuse and inequality or discrimination on the basis of race, gender, age, religion, sexuality, culture or disability. Supply Partners must place an emphasis on the control of these and further unethical and illegal employment practices, such as modern day slavery, forced and child labour and other forms of exploitative and unethical treatment of workers and aid recipients. DFID will expect a particular emphasis on the management of these issues in high risk fragile and conflict affected states (FCAS), with a focus on ensuring remedy and redress if things go wrong.

Specific requirements:

- ✓ Development and proof of application and embedding of a Safeguarding Policy;
- ✓ Delivery of Social Responsibility, Human Rights and Safeguarding training throughout the delivery chain;
- ✓ Compliance level 1 Supply Partners must be fully signed up to the UN Global Compact⁸;
- ✓ Practices in line with the International Labour Organisation (ILO) 138⁹ and the Ethical Trading Initiative (ETI) Base Code¹⁰ are to be encouraged throughout the delivery chain;
- ✓ Policies to embed good practice in line with the UN Global Compact Guiding Principles 1 & 2 on business and human rights throughout the delivery chain are required, as detailed in Annex 2;
- ✓ Compliance level 1 Supply Partners to submit a Statement of Compliance outlining how the organisation's business activities help to develop local markets and institutions and further how they contribute to social and environmental sustainability, whilst complying with international principles on Safeguarding and Human Rights labour and ethical employment, social inclusion and environmental protection;
- ✓ Overarching consideration given to building local capacity and promoting the involvement of people whose lives are affected by business decisions.

⁸ <https://www.unglobalcompact.org/what-is-gc/mission/principles>

⁹ http://ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138

¹⁰ <http://www.ethicaltrade.org/eti-base-code>

Compliance KPIs and contractual checking mechanisms - DFID Contracts

Maintaining standards of assurance and driving sustainable improvements, in connection with the Code's principles through Supply Partner relationships is a key focus for DFID.

Supply Partner and delivery chain compliance checking processes will take place in accordance with the agreed compliance levels and the specific contractual clauses down the delivery chain, DFID shall undertake compliance checks.

Where appropriate, a plan setting out the Code of Conduct delivery methodology for the Supply Partner arrangements during the contract term may be jointly developed with DFID during Contract mobilisation.

Contract Checks and Compliance KPIs		KPI target	Specific Contractual link	Checking mechanism
i.	Declaration of acceptance of the DFID Supply Partner Code of Conduct	Annual declaration submitted by contracted Supply Partner on behalf of delivery chain	Contract Terms and Conditions Clause 5.1 and Clause 7.7	Declaration of acceptance at the applicable level of compliance with each of the 6 sections received
	ii. Declaration of sign up to the UN Global Compact	Annual declaration submitted by the direct Supply Partner	Standard Selection Questionnaire (SSQ)	Declaration of applicable sign up / application received
1.	<u>VfM and Governance standards</u>			
a)	Economic and governance policies in practice	Annual updated documentation provided (copy of Policies with detailed annual financial breakdown relating to contract)	Terms and Conditions Clauses 13, 14 & 15	Annual contract review/programme management Audit checks Compliance checks
b)	VfM being maximised over the life of a contract 1. By confirmation of annual profit level fluctuations since tender submittal 2. by timely identification and resolution of issues 3. ensuring lessons learned are shared	Updated documentation submitted once annually	Contract T&Cs Clauses 15 & 20 Terms of Reference Terms of Reference	Compliance checks Annual contract review/programme management Compliance checks Annual contract review/programme management Compliance checks

c)	<u>Tax Declaration (HMRC format)</u>			
	<ul style="list-style-type: none"> Tax the organisation paid on profits made in the last 3 years, and in which countries Compliance with relevant country level tax regulations fully understood and met 	Annually updated documentation submitted by contracted supplier and on behalf of delivery chain partners	Terms and Conditions Clauses 15, 23 & 24 Terms of reference	Annual return Compliance checks
2.	<u>Ethical Behaviour</u>			
a)	Recruitment policy (which must address circumstances where there may be potential or actual conflict of interest)	Updated policy documentation submitted once annually by contracted supplier and on behalf of delivery chain partners	Terms and Conditions Clauses 6, 51 & 54	Annual return Compliance checks
b)	Ongoing conflict of interest, mitigation and management	As 2a. above	Terms and conditions Clause 54	Annual return Compliance checks
c)	Refresher ethical training and staff updates (including disclosure restrictions on DFID confidential information)	Copy of training logs provided Delivery in accordance with training programme in place	Terms and conditions Clause 6, 29, 51 & 54	Annual return Compliance checks
d)	A workforce whistleblowing policy	Continuous workforce awareness maintained Policy in place	Terms and Conditions Clause 48	Annual return Compliance checks
e)	1. Procedures setting out how, staff involved in DFID funded business, can immediately report all suspicions or allegations of aid diversion, fraud, money laundering or counter terrorism finance to the Counter Fraud and Whistleblowing Unit (CFWU) at reportingconcerns@dfid.gov.uk or on +44(0)1355 843747 2. Employees working on DFID Contracts fully aware of the DFID external website reporting concerns mailbox	Continuous awareness maintained Procedure in place Continuous awareness maintained	Terms and Conditions Clauses 6, 48 & 54 Terms and Conditions Clause 48	Annual return Compliance checks Annual return Compliance checks
f)	Declarations of direct or subcontractor staff members proposed to work on DFID funded business if employed by DFID or the Crown in the preceding two years Supply Partners and their subcontractors must provide proof of compliance with the HMG approval requirements under the business appointment rules	Details submitted as applicable	Terms and Conditions Clause 48 HMG business appointment rules	Annual return Compliance checks Contract management

3.	<u>Transparency and Delivery Chain Management</u>			
a)	IATI compliance for Supply Partner and their delivery chain Supply Partners	Updated documentation submitted once annually	Contract Terms and Conditions Clause 28	Tender evaluation Periodic spot checks Compliance checks
b)				
c)	Up to date and accurate records of all delivery chain Supply Partners	Updated documentation submitted in accordance with Clause 26.7	Contract Terms & conditions Clause 9 & 28 Tender submittal – delivery chain	Annual return Compliance checks Contract management
d)	Policies and practices for the management of delivery chain partners and affiliates aligned to the DFID Supply Partner Code of Conduct	Updated documentation submitted annually	Contract Terms & conditions Clause 7	Contract management processes Periodic spot checks Compliance checks
e)	Tax evasion, bribery, corruption and fraud -statements of assurance provided	Updated documentation submitted once annually	Contract Terms and Conditions 23 & 24	Periodic and annual return spot checks Compliance checks
f)	All delivery chain partner employees working on DFID Contracts fully aware of the DFID reporting concerns mailbox	Updated documentation submitted once annually	Contract Terms & Conditions Clause 48	Periodic and annual return spot checks
	HMG prompt payment policy adhered to by all delivery chain partners	Updated documentation submitted once annually	Contract Terms & conditions 7	HMG spot checks Compliance checks Annual return
4.	<u>Environmental Issues</u>			
a)	1.Steps in place to identify environmental risks (e.g. by maintaining a risk register) Ensuring legislative requirements are being met 2. Formal context specific environmental safeguarding policies in place to ensure legislative requirements are being met	Updated documentation submitted once annually	Contract Terms & Conditions Clause 53 and ToRs	Contract management Periodic and annual return spot checks Compliance checks
b)	Published annual environmental performance reports	Updated documentation submitted once annually	Contracts ToRs	Periodic and annual return spot checks
5.	<u>Terrorism and Security</u>			
a)	Up to date status declaration regarding the reporting of terrorist offences or offences linked to terrorist activities or financing	Updated documentation submitted if and when changes identified since tender submittal	Standard Selection Questionnaire (SSQ)	Annual return Spot checks Compliance checks Annual contract review
b)	Certification at or above the level set out in the tender submittal	Updated documentation submitted if changes	Standard Selection Questionnaire (SSQ)	Annual return Compliance checks

	3.Level of commitment in relation to the Contract evident in delivery practices in line with the workplace and community guidance provided in the DFID Supply Partner Code of Conduct Annex 2	Updated documentation submitted annually		Tender evaluation Compliance checks
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Contractual Annual Compliance Declaration

Prior to Contract Award and thereafter on an annual basis at the end of each financial year, the Supply Partner is required to submit a Compliance Declaration in connection with the management of any DFID Contract in place and on behalf of their delivery chain partners. Supply Partners should be aware that spot check compliance monitoring will take place to verify responses.

Supply Partner Compliance Declaration

Key:

Contractual Requirement:

X denotes full compliance 1 required

O denotes reduced compliance level 2, unless otherwise stipulated in contractual Terms of Reference

Compliance Level 1

Supply Partners with an individual contract value of £1m or above, or two or more contracts funded by DFID with a combined value of £5m or above.

Compliance Level 2

Supply Partners with an individual contract value below £1m, or two or more contracts funded by DFID with a value of less than £5m.

Compliance Level 3

Supply Partners with an individual contract value or component of a contract funded by DFID with a value below the EU Threshold. At this level Supply Partners are required to adhere to the overarching Code principles and recognise, mitigate and manage risks but will not be monitored against the contractual KPIs.

KPI Compliance Area		Supply Partner Compliance Level		Commentary	CEO Signatory	Signature & date of signing
		1	2			
1.	<u>VfM and Governance standards</u>					
a)	Evidence of how economic and governance policies work in practice	X	O			21/06/2019
b)	VfM maximisation over contract life					
	1. Annual confirmation of % profit on contract	X	X			
	2. timely identification and resolution of issues	X	X			
c)	3. ensuring lessons learned are shared	X	O			

				[REDACTED]		
	<u>Tax Declaration (HMRC format)</u> Comply with all tax requirements	X	X	[REDACTED]	■	21/06/2019
2.	<u>Ethical Behaviour</u>			[REDACTED]	■	21/06/2019
a)	Adherence to agreed conflict of interest management procedures	X	X	[REDACTED]		
b)	Evidence of workforce ethical training updates taking place	X	X	[REDACTED]	■	21/06/2019
c)	Confirmation of direct and delivery chain partner compliance with the HMG approval requirements under the Business Appointment Rules.	X	X	[REDACTED]	■	21/06/2019
d)	Confirmation and full evidence of awareness of an up to date workforce whistleblowing policy	X	X	[REDACTED]	■	21/06/2019
e)	Procedures in place and full evidence of awareness of how, staff involved in DFID funded business, can immediately report	X	X	[REDACTED]	■	21/06/2019

	all suspicions or allegations of aid diversion, fraud, money laundering or counter terrorism finance to the Counter Fraud and Whistleblowing Unit (CFWU) at reportingconcerns@dfid.gov.uk or on +44(0)1355 843747			[REDACTED]		
f)	HMG Business appointment rules followed - Conflict of Interest(COI) declarations made for direct or delivery chain staff members proposed to work on DFID funded business if employed by DFID or the Crown in the preceding two years.	X	X	[REDACTED]	■	21/06/2019
3.	<u>Transparency and Delivery Chain Management</u>			[REDACTED]	■	21/06/2019
a)	Supply Partner and delivery chain partners IATI compliant	X	O	[REDACTED]		
b)	Provision of up to date and accurate records of all delivery chain Supply Partners provided within the required frequencies, including annual contractual spend on SME's, women owned businesses and modern apprenticeships in place	X	O	[REDACTED]	■	21/06/2019
c)						
d)	Verification that policies and practices for the management of delivery chain Supply Partners are aligned to the DFID Supply Partner Code of Conduct i.e. by demonstrating delivery chain governance arrangements in place	X	O	[REDACTED]	■	21/06/2019
e)				[REDACTED]		
f)				[REDACTED]		
	Assurance there has been no change to previous statements provided in relation to tax evasion, bribery, corruption and fraud	X	X	[REDACTED]	■	21/06/2019
	Confirmation that all delivery chain Supply Partners' employees working on DFID Contracts are fully aware of the DFID external website reportingconcerns	X	X	[REDACTED]		

	mailbox			[REDACTED]		
	Confirmation of adherence to HMG prompt payment policy with all their delivery chain Supply Partners	X	O	[REDACTED]	■	21/06/2019
4.	<u>Environmental Issues</u>				■	21/06/2019
a)	Environmental risks identified (e.g. by maintaining a risk register) with formal context specific environmental safeguarding policies in place	X	O	[REDACTED]		
b)	Annual published environmental performance reports	X	O	[REDACTED]	■	21/06/2019
5.	<u>Terrorism and Security</u>				■	21/06/2019
a)	Up to date status declaration regarding the reporting of terrorist offences or offences linked to terrorist activities or financing	X	X	[REDACTED]		
b)	No engaged employees or delivery chain partner personnel appears on the Home Office Prescribed Terrorist Organisations List	X	X	[REDACTED]	■	21/06/2019
c)				[REDACTED]		
d)				[REDACTED]		
	Data is managed in accordance with DFID security policy and systems are in accordance with the HMG cyber essentials scheme	X	X	[REDACTED]	■	21/06/2019
	Adherence to the best practice global principles for digital development	X	O	[REDACTED]	■	21/06/2019
6.	<u>Safeguarding, Social Responsibility and Human Rights</u>				■	21/06/2019
a)	Provision of a document demonstrating current organisational good practice and assuring compliance with key legislation on international principles on labour and	X	O	[REDACTED]		

[illegible]

[illegible]

UN Global Compact – Human Rights

Principle 1: businesses should support and respect the protection of internationally proclaimed Human Rights

Principle 2: businesses should ensure they are not complicit in Human Rights abuse

Organisations should do this by giving attention to vulnerable groups including women, children, people with disabilities, indigenous groups, migrant workers and older people.

Organisations should comply with all laws, honouring international standards and giving particular consideration to high risk areas with weak governance.

Examples of how suppliers and partners should do this are set out below:

In the workplace

- by providing safe and healthy working conditions
- by guaranteeing freedom of association
- by ensuring non-discrimination in personnel practices
- by ensuring that they do not use directly or indirectly forced labour or child labour
- by providing access to basic health, education and housing for the workers and their families, if these are not provided elsewhere
- by having an affirmative action programme to hire victims of domestic violence
- by making reasonable accommodations for all employees' religious observance and practices

In the community

- by preventing the forcible displacement of individuals, groups or communities
- by working to protect the economic livelihood of local communities
- by contributing to the public debate. Companies interact with all levels of government in the countries where they operate. They therefore have the right and responsibility to express their views on matters that affect their operations, employees, customers and the communities of which they are a part
- through differential pricing or small product packages create new markets that also enable the poor to gain access to goods and services that they otherwise could not afford
- by fostering opportunities for girls to be educated to empower them and also helps a company to have a broader and more skilled pool of workers in the future, and
- perhaps most importantly, a successful business which provides decent work, produces quality goods or services that improve lives, especially for the poor or other vulnerable groups, is an important contribution to sustainable development, including human rights
- If companies use security services to protect their operations, they must ensure that existing international guidelines and standards for the use of force are respected

Section 3

TERMS OF REFERENCE

Lot 2- Facilitation Service in 5 countries

Facilitation Unit to support stakeholder-led forest governance reforms anchored in Voluntary Partnership Agreements

Introduction

1. The Forest Governance, Markets and Climate (FGMC) programme supports governance and market reforms that reduce the illegal use of forest resources and benefit poor people who depend on forests for their livelihoods. It supports global efforts to tackle deforestation, in particular by tackling illegal logging in developing timber-producing countries and the trade in illegally-produced timber products. It applies lessons from the timber trade to other commodities that impact forests and people who depend on forests for their livelihoods. It is part of a coordinated endeavour with the EU, and is aligned with global efforts involving Norway, China, Japan, the USA, and developing forest countries in Africa, Asia and Latin America.
2. The FGMC programme is framed by four outputs:
 - i. forest governance, tenure and market reforms in timber-producing countries;
 - ii. policies and measures preventing trade in illegal timber into the EU and other consumer markets, especially China;
 - iii. the generation of evidence, communities of practice, and political engagement at the international and global levels;
 - iv. applying lessons from the timber trade to the trade in other commodities that impact on forests, and increasing policy alignment with other processes that affect forest land use, including REDD+ and CITES.
3. The Facilitation service will contribute to output 1 of the programme. Details of previous contracts, including for Facilitation services are published on DFID's Devtracker: <https://devtracker.dfid.gov.uk/projects/GB-1-201724/documents>.
4. Around half of forest clearance in developing countries is illegal. These illegal practices undermine the rule of law and fuel corruption, lose billions in potential tax revenues, deter investment and prevent the growth of sustainable businesses.
5. Improving the way forests are managed, regulated and exploited is essential to protecting the livelihoods of over 1 billion poor people and marginalised rural communities who depend on forests and ensuring that forests contribute to sustainable economic growth. FGMC works to address this challenge, by driving changes in consumer markets to source only legal timber (the 'demand side' of the challenge), and supporting producer countries to tackle illegal logging at source (the supply side).

6. The focus on tackling both the demand-side and supply-side was first agreed at the G8 Summit in 1998. Since 2003 the UK has worked to advance this strategy in conjunction with an EU Forest Law Enforcement Governance and Trade Action Plan (FLEGT), which has closed EU markets to illegal trade. The UK also works with the USA and Australia to develop similar approaches in their markets.
7. As part of the FLEGT Action Plan, the EU negotiates forest product specific trade deals that drive sector governance, transparency and legal reforms to benefit forest dependent communities and eliminate illegal deforestation. These are known as Voluntary Partnership Agreements (VPA). VPA provide an innovative approach to combining trade and development objectives to help forest rich developing countries (see Annex 3). The VPA are legally-binding trade agreements between the European Union and countries where illegal logging is a problem, and where the country sees advantage in using trade incentives as a means to tackle it.¹ So far 15 countries are involved, representing 75% of the global tropical timber trade. Indonesia is the first country to issue licenses that confirm full compliance and comprehensive third party auditing of all supply chains.² Five African countries – Ghana, Central African Republic, Cameroon, Republic of Congo and Liberia – have ratified VPA. In Asia, the VPA is agreed with Indonesia and Vietnam. In the Americas, negotiations are reaching conclusion with Guyana and Honduras. Indonesia is delivering FLEGT licenses to the EU market and Ghana anticipates the start of licensing late in 2018.
8. FGMC assists forest governance reforms primarily by supporting inclusive stakeholder-led processes to agree and oversee the reforms that are anchored in the bilateral VPA treaty. The VPA aim to define and monitor legal compliance, to promote transparency and tackle corruption, protect forests and improve benefits for communities. In Ghana, Liberia, Guyana, the Republic of Congo and other tropical countries, FGMC is encouraging local actors to improve business standards and poor people's lives while increasing accountability. FGMC assistance varies from providing evidence for reform, to facilitating negotiations between government, civil society and business, to providing technical assistance, to equipping government and non-government stakeholders with the tools that allow them to regulate and monitor forest operations and improve accountability.
9. Each country entering a VPA undertakes to develop and implement a legality assurance system, which includes defining "legal timber", implementing agreed controls on forest harvesting and trade, licensing exports and regular independent audits of the system's functioning. Once the system is operational across the entire country, only licensed product will be allowed into the EU.
10. Developing and implementing these systems requires extensive work by a wide range of stakeholders in each country. Apart from government regulators, they include private sector operators from large corporate enterprises to small artisanal loggers, and civil society groups representing communities and environmental interests. Often

¹ The UK remains committed to promoting fair and responsible trade and we are seeking practical ways to transpose the principles of linking demand and supply to drive positive governance reforms in new policies after the UK leaves the EU. FGMC remains focused on helping developing countries reinforce the governance of their forests and encouraging responsible trade. These may eventually be transposed to new UK-partner agreements depending on the outcome of the UK- EU future relations.

² EU donors with relevant country-specific development programmes are coordinating to provide support for necessary governance reform. The UK leads in Indonesia, Guyana, Liberia and Ghana. Other countries engaged in support of VPA processes include Norway, Germany, France, Belgium, Sweden, Finland, as well as the European Commission.

they are debating different actors' rights and obligations under a country's forest-related laws for the first time.

11. The ultimate success and credibility of VPAs require: (i) that actions envisaged in the agreements stay on track; (ii) that stakeholder processes are sustained and strengthened; (iii) that requirements of international markets for evidence of legal production of timber and agricultural commodities produced on forest land are available to and understood by stakeholders in each partner country; (iv) that the progress made by partner countries in tackling forest governance challenges, including implementation of their VPAs, is known to international stakeholders; and (v) that lessons are shared between partner countries negotiating or implementing FLEGT VPAs. Facilitators have proved instrumental helping partner governments meet these expectations.
12. Facilitation ensures the quality of national deliberations and inclusion, and helps clarify misunderstandings and promote lesson learning and thereby helping to secure effective implementation of the reforms that are required for the VPA. A facilitator dedicated to a specific national process has demonstrated its value: providing trusted, neutral advice to government, community and industry stakeholders, and helping to overcome conflicts and blockages in the VPA process. Governance reform processes take many years, and both trusted relationships and understanding of local political sensitivities are critical to the success of the facilitation work. Having several country facilitators under a single contract has had the added benefits of adaptability and lesson sharing across countries. The facilitators also provide country-level intelligence and coordination for FGMC-financed actions as well as guidance to DFID country offices where appropriate.
13. FGMC has supported Facilitation work over the past 5 years in 8 countries.³ Lessons from earlier efforts to support the inclusive policy development and treaty negotiations are summarised in Briefing Notes (provided in the Tender Pack) and also available on the European Forest Institute (EFI) FLEGT Facility website "VPA Unpacked" <http://www.vpaunpacked.org/>.
14. In this new phase, FGMC will concentrate its facilitation support to countries now implementing the governance reforms framed under agreed VPA. The Supplier will deploy facilitators to: Liberia; Ghana; Guyana; Republic of Congo; and make provision for one additional in Cameroon.

OBJECTIVE

15. The objective of this contract is to establish and operate a Facilitation service that helps sustain and support national stakeholders so that they input and inform forest sector governance reforms as framed by the Voluntary Partnership Agreements in Ghana, Liberia, Republic of Congo and Guyana, making provision to add a 5th country as indicated later by DFID.

³FGMC has supported facilitation in Ghana, Liberia, Cote d'Ivoire, Republic of Congo, DRC, Guyana, Myanmar and Indonesia. Most of this support ended in 2017. See DFID's Devtracker: <https://devtracker.dfid.gov.uk/projects/GB-1-201724/documents> for more information on these earlier efforts.

16. Facilitation support will improve the quality of national deliberation, encouraging inclusion of different stakeholder interests, helping clarify misunderstandings and promoting lesson learning and thereby helping to establish a strong foundation for lasting transformation in the ways forests are governed and managed. This will help build local ownership for VPA results in each country where the Facilitators are deployed.
17. The Facilitation Service will contribute to FGMC programme-wide monitoring and lesson learning and assist in the coordination of FGMC action at the country level to improve programme effectiveness.

GEOGRAPHIC DEPLOYMENT

18. Facilitators will be deployed in: Ghana, Liberia, Republic of Congo and Guyana. DFID would like bidders to include provision for a 5th country Facilitator, most likely Cameroon. The selection of a 5th country depends on VPA progress and the availability of support from other donors. Bid proposals should make estimated budget provision for a 5th country. DFID will inform the successful bidder about the choice of a fifth country as soon as possible, preferably before contract signature.

CLIENT, RECIPIENTS AND BENEFICIARIES OF FACILITATION SERVICE

19. The recipients will be the national stakeholders engaged in governance reform processes framed by the VPA, and in particular the agencies responsible for forest regulation and leading in VPA implementation, the private sector, especially small businesses who have limited capacity for representation at national policy making, and concerned civil society organisations.
20. The client is the UK Department for International Development (DFID), working closely with other donors (including the EU) who are supporting reforms framed by the VPA.
21. Working arrangements may vary from one country to another depending on the "positioning" of the facilitator. In some instances a facilitator will need to work closely with a responsible government agency, while in others a facilitator might play a more neutral role in between government and non-government actors, while in another context a neutral role between the national actor and international (DFID) interests may be more appropriate. This positioning for each country context will be proposed and agreed in the Inception Report following consultations in country and with the European Forest Institute's FLEGT Facility experts.
22. The intended beneficiaries of the services are the forest communities and small businesses working in forests and other citizens whose livelihoods depend on forests, and the Governments seeking to manage their forests sustainably and other citizens engaged in ensuring effective law enforcement and accountability in the 5 concerned countries.

SCOPE OF SERVICES

23. The Facilitation service will support the 5 concerned governments and the associated national stakeholder bodies engaged in the VPA process to build and maintain

momentum in sector governance reforms. Details of the country specific processes are described in Annex 1 and up to detail can be found on the VPA country pages of the EFI FLEGT Facility website: <http://www.euflegt.efi.int/vpa> .

24. The role and functions of Facilitators differs significantly from classic Technical Assistance, this distinction is explained in briefing document provided as part of the tender pack. The Bid proposals, in describing their methodology for service delivery, will demonstrate a clear understanding of the role of Facilitators in fostering local ownership and an inclusive policy dynamic. Further information on VPA Facilitation may be found on the EFI FLEGT Facility website <http://www.euflegt.efi.int/home> .
25. Facilitators foster dialogue between stakeholders with divergent and competing interests, they contribute knowledge and analysis from other processes to inform this dialogue and draft reports, briefs, feedback to improve communications on VPA progress and challenges. Therefore, this service relies heavily on the diplomatic skills and qualities of the individual Facilitators and for this reason, bid assessment places significant weight on the experts proposed to work as Facilitators (see Annex 2).
26. The supplier will deploy a facilitator to Liberia, Ghana, Guyana, Republic of Congo, and make provision in their bid for one additional Facilitator in Cameroon. The approach to this deployment and team of experts will form a critical part of bid assessment.
27. The Facilitation service will target improved understanding and capacity building to:
 - Government agencies responsible for monitoring forest sector performance and VPA implementation;
 - Private sector businesses and associations (including small enterprises and community forest organisations) to enable them to fully participate in VPA structures, governance reforms and national policy making as well as to improve their understanding of international market requirements;
 - National civil society organisations (CSO) and the various representative bodies of communities and forest enterprises to enable them to fully participate in VPA structures, governance reforms and national policy making.
28. The Facilitators will provide regular political economy analyses, intelligence and VPA progress updates as part of the quarterly reports to assist the FGMC team to gauge progress. In particular, the Facilitators will work with the FGMC Programme Management and Support Team (PMST) to assess country-specific transformational change on an annual basis (see Annex 7).
29. The Supplier will establish a central backstopping Unit for oversight, management, reporting, monitoring and learning drawing together best practice from across the 5 countries.

TIMING AND DURATION

30. The contract will run for a period of 36 months: a 2 month Inception period followed by 34 month implementation period; with the option for extension for 2 years, subject to continuing need, FGMC review recommendations, available resources and satisfactory performance of the Supplier.

31. There will be a Review Point in the contract at the end of the Inception period, 2 months after contract start date. Advance to the Implementation period will be subject to satisfactory performance of the Supplier in working with national stakeholders to establish an in-country presence and proposing country-specific positioning and workplan in the Inception Report that is approved by DFID. There will be a further review at the end of the first year.

Table 1. Timeline

<i>Requirement</i>	<i>Timing</i>
Country specific year one work plan drafted in consultation the with national VPA stakeholder body	As part of inception report
Gender Strategy	As part of the bid/proposal
Inception report	Within 2 months of contract start date
Narrative reports with update on the quality of multi-stakeholder processes, political and stakeholder analysis, quarterly VPA progress updates and risk register	Annually and Quarterly a period following the preceding financial quarter
Learning and progress updates to inform PMST annual assessment of transformational change for each country	Annual workshops with PMST
Learning seminars and workshops	Throughout the contract
Monitoring, Evaluation and Learning Strategy	As part of the bid/proposal
Project closure report and asset disposal plan	Draft 90 days before project end date; final closure report within 2 months of closure.

BUDGET

32. DFID has a budget of up to a maximum of £6,000,000, inclusive of all 5 countries and all applicable taxes, covering the 36-month period and a budget of up to a maximum of £2 million, inclusive of all applicable taxes, in the event of any extension. Suppliers should not craft their bids in such a way as to reach the budget ceiling that this parameter implies. Note that DFID projects are not automatically tax exempt and therefore Suppliers will be liable to pay any relevant taxes in the country of operation. Tax liabilities should therefore be taken into consideration in commercial proposals.

33. Subject to the satisfactory performance, continuing need and availability of funding, the contract may be extended for a period of up to a further 24 months and up to the value shown above to cover continuing work.

THE REQUIREMENTS

34. The Supplier will establish a Unit to coordinate the actions of country-based Facilitators. The bids will propose details of this backstopping function that may include: HR management, technical oversight, finance, reporting, monitoring and learning, including contributing to the PMST's monitoring of transformational change (see Annex 7).
35. By the end of the Inception period the Supplier will deploy a facilitator to each of the countries: Liberia; Ghana; Guyana; Republic of Congo; and possibly a 5th country (see paragraph 18). The Supplier will develop specific 1st year workplan for each country by the end of the inception period, based on feedback obtained during country visits, dialogue with VPA stakeholder bodies, discussion with EFI experts and FGMC's Senior Responsible Owner (SRO). These workplans should clarify the positioning of the Facilitator in light of other on-going support to VPA implementation and the needs of the stakeholder process. Experience has demonstrated that local presence is critical to build effective relationships and coordination.
36. Suppliers should propose in their tender response the approach they will adopt and supporting rationale to encourage inclusive decision-making processes guided by the priorities established by the Joint Implementation Committee of the VPA.
37. The services will include:
- a. Provision of project management, technical, financial, and administrative oversight of actions across all countries – aiming at all times to deliver Value for Money;
 - b. Support and guidance to the national multi-stakeholder bodies guiding VPA implementation in each country encouraging effective representation of diverse interests;
 - c. Shared learning between actors engaged across the 5 countries;
 - d. Timely intelligence of progress and challenges to DFID and PMST together with regular political economy analysis so as to inform FGMC risk monitoring; this reporting will be as circumstances dictate, but at least quarterly through confidential reports;
 - e. Performance management, quality assurance and monitoring covering finance, risk, challenges and progress in the stakeholder dynamics, political analysis, supported by quarterly reporting to an agreed FGMC framework.
38. In each of the 5 countries the Facilitators will:
- a. Do a rapid stocktaking of VPA progress and challenges, mapping of VPA stakeholder bodies and processes, reflection on the extent and effectiveness of stakeholder representation in consultation with EFI VPA experts and the PMST. This will establish a baseline for future monitoring and help guide the development of country-specific Facilitator workplans and monitoring indicators.
 - b. Support the multi-stakeholder processes, in particular:

- Encourage those leading the national stakeholder processes to foster inclusive, active, dialogue between stakeholders to inform decision-making on national forest governance reforms and VPA implementation and ensure that consultations are well documented and information is distributed to wider groups;
 - Assist stakeholder representatives in their representation functions and encourage them to identify and articulate their respective group interests
 - Identify impediments to stakeholder inclusion in the VPA process and strategies for addressing these.
 - Support national stakeholders to enable them to make effective contributions to the joint VPA structures (such as Joint Implementation Committee (JIC)) that monitor VPA progress and VPA challenges.
- c. Share information and experience with national stakeholders, in particular:
- Share lessons learnt from wider FLEGT and FGMC community of practice with decision-makers, civil society organisations, the private sector within and between partner countries so that best practice informs the process;
 - Share information with national stakeholders on the requirements of international market standards and legislation (such as EUTR) related to the trade in timber products and agricultural products grown on forest land (such as RSPO for palm oil);
 - Ensure information exchange and encourage coordination between all FGMC and other donor projects supporting governance reforms and FLEGT in the country;
- d. Work with national VPA stakeholders to promote synergies between the VPA process and any other forest-related initiatives particularly those framed by the National Determined Contributions (NDCs) to address climate change
- e. Provide quarterly reports to the PMST and DFID that include a report on VPA progress and the extent of transformation of sector governance. These reports will draw from national progress reports, EFI updates, JIC reports and assist FGMC in documenting progress overall, notably on :
- Progress in the implementation of Timber Legality Verification System (LAS) such that the system's credibility with national and international stakeholders is maintained;
 - monitoring through Independent Audits or other processes;
 - design and implementation of joint impact monitoring;
 - market access for FLEGT-licensed timber products (from ITTO);
 - governance reforms identified in the VPA (such as artisanal chainsaw milling, community-based land tenure, transparency); and
 - promotion of legal and sustainable forest management and trade
- f. Work with the PMST to develop annual assessments of transformational change for each country (see Annex 7)
39. As indicated above the specific focus for Facilitation support will vary from country to country depending on the strength and opportunities of the national processes and the needs of different stakeholder groups. The country-specific facilitation work plans developed during the Inception period will outline the priorities for facilitation support, propose targets for key tasks (including for the actions suggested in paragraph 40) relative to the baselines confirmed during Inception period. The Inception Report will

propose a monitoring framework that the Supplier will use to present evidence that the project activities are contributing to (i) an inclusive and active dialogue between national stakeholders on VPA implementation; (ii) the functioning of VPA stakeholder structures, (iii) the understanding of VPA progress and transformational change in each country, and (iv) coordination between initiatives. Progress will be reported quarterly and will be verified periodically through monitoring visits by the FGMC PMST (see paragraph 63), feedback to the SRO from the EFI VPA team and by DFID staff.

40. In delivering its services the Facilitation Unit will be guided by the following principles:⁴
 - a. Working with existing structures and being guided by the priorities of VPA implementation as indicated by the Joint Implementation Committees;
 - b. Ensuring synergy and linkages with existing projects and initiatives;
 - c. Fostering inter- agency cooperation, and nurturing engagement of civil society and private sector organisations so as to build political momentum;
 - d. Encouraging local ownership of the in-country processes and institutions;
 - e. Demonstrating impacts on gender and equality;
 - f. Applying a learning-centred approach to capture and share lessons with national stakeholders and the FGMC community of practice.
41. The Supplier will ensure that the Unit retains flexibility to respond to changing needs and priorities, to manage risks and maximise opportunities in pursuit of FGMC's outcome and impact, and the specific VPA objectives of each country. This flexibility will be agreed through annual work planning process with the PMST and DFID FGMC team.
42. Suppliers are offered flexibility in the structure and composition of the Unit. However, we expect Suppliers to propose in their bid a relevant structure and an appropriate mix of staff within the team to fully meet the needs of this requirement.
43. Suppliers should demonstrate in their bid how they intend to ensure continuity of their core personnel over the life of the contract, through strong recruitment, retention, and performance management processes. Any need for changes to key personnel shall be agreed, in writing, with DFID in advance. DFID will consult with in-country stakeholder before giving its agreement to changes in Facilitators. For any long-term staff, the Supplier will operate a staff performance management system modelled on international best practice.
44. **Value for Money:** Suppliers should ensure their proposals demonstrate how they will deliver maximum value for money from the budgetary envelope. Proposals should include a detailed approach to value for money metrics. The Supplier's proposal will:
 - a. In the commercial response identify how the supplier will maximise value for money, including how they will evaluate and report value for money elements;
 - b. In the commercial response, provide any cost benchmarking information where available to allow DFID to make a good value for money assessment;

⁴ Annex1 describes the main stakeholder institutions established by the VPA; the EFI FLEGT Facility website provides up to date information on progress on each VPA process and its FLEGT Map indicates all the active FLEGT related projects in each country, including those financed under the FGMC. <http://www.euflegt.efi.int/home>

- c. in the commercial proposal present a full breakdown of costs specifying any management or overhead costs and profit margins if applicable. Such detail will be provided within the pricing pro-forma.

45. Gender: The Supplier shall provide, as part of their proposal, a gender strategy that will detail its approach to develop and implement the project in a way that takes into account the different needs, priorities, knowledge and capabilities of women, girls, men and boys, ensuring that they participate in, and benefit equally from, the processes supported by the project.

46. Disability and Inclusion: The Supplier shall outline in their proposal how they intend to develop the project in ways that take into account the needs and capabilities of people with disability and other vulnerable groups. The Supplier shall include details of how they will encourage inclusive stakeholder engagement process in relevant policy-making, building from agreements established under the VPA.

47. Risk Assessment: The Supplier shall evaluate the risks associated with the successful implementation of the project in each country context, and shall propose measures which aim to reduce the probability and mitigate the impact of the risks. The risk assessment will form part of the Supplier's proposal and will be further elaborated during the Inception period. In the Inception report the Supplier will propose how they will systematically monitor risk throughout the project lifecycle and the escalation chain. Risks will be identified in accordance with DFID risk matrix. For the avoidance of doubt, this risk assessment is in addition to the risk assessments required to meet the Supplier's Duty of Care set out in paragraphs 85-96.

CONSTRAINTS AND DEPENDENCIES

48. As outlined in the ToC for FGMC (see Annex 4) the Facilitation project contributes to political reform processes in 5 countries and helps to strengthen and coordinate the actions of other FGMC projects working in these countries. In particular, projects that are seeking to build national systems of governance and accountability will be supported by improved understanding of the local stakeholder dynamics and greater access to diverse stakeholder interests. The governance reforms framed by the VPA may also be supported by the EU, USA, the World Bank, Norway and other donors and it will be important that these efforts are coherent and coordinated.

49. The overarching aims for improved regulation and governance that are the key objectives of the country specific VPA will be guided by priorities established by the Joint Implementation Committees that monitor progress and as such will be guided by this political steerage. Joint Implementation Committees are co-chaired by EU Ambassador and sector Ministers of the country with UK representation. The EFI FLEGT Facility assists the two parties in the functioning of the JIC.

50. The Facilitation role must establish neutrality and be seen by a range of national stakeholders to be neutral and objective so as to function effectively with a range of stakeholder interests. Where Suppliers, or consortia partners are engaged (or bidding) in other projects in the sector in the 5 countries careful consideration of potential perceived conflicts of interest and how to manage them would need to be addressed in the proposal.

INCEPTION PERIOD

51. The contract will have a 2 month Inception Period which will commence from the Contract start date. The performance of the Supplier will be assessed at the end of this Inception period, which will also serve as a formal review point. DFID will review the performance of the Supplier and the Inception Report itself, and if satisfied confirm approval to move to the Implementation Phase. Any delay with the Inception report will delay start of implementation.
52. During the 2 month inception period, the Supplier will:
- i. visit each country and consult with the Government, DFID country office (where relevant) and the VPA team of the EFI FLEGT Facility (based in Barcelona) to determine the detailed facilitation requirements for each country and the positioning for this country-specific support. A workplan, stocktaking baseline for the Facilitator in each country will be developed during the Inception period.
 - ii. Develop an Inception Report that includes i) a short stock take on the state of VPA implementation reflecting on stakeholder perceptions, ii) set out a baseline of stakeholder engagement (to track the extent of inclusion and representation in VPA processes; iii) a detailed outline of tasks framed into a workplan, iv) monitoring framework and reporting arrangements, and v) facility requirements
 - iii. Develop the first annual work-plan to be reviewed by the PMST;
53. The main objectives of the Inception period are to establish a Facilitation Unit that is fit for purpose, including the deployment of facilitators in 5 countries, a stocktaking of the state of the multi-stakeholder dynamic in each country positioning the Facilitators to meet the country-specific needs.
54. DFID will provide a written response to the Inception report within two weeks. A final Inception Report will be submitted to DFID within two weeks of receiving DFID's response to the draft Inception Report.
55. The Supplier will develop as part of the Inception period the following key documents that will form the basis for operations in the Implementation period:
- i. Theory of Change, setting the Facilitation support to multi-stakeholder process in the wider context of VPA implementation (see Annex 1) and reflecting on whether the intended project outputs will generate the results, with clear articulation of the assumptions that underpin the change process envisaged;
 - ii. Results Framework, setting out indicators that will provide evidence of the facilitation service's contribution to improving the quality of stakeholder engagement, sustaining political momentum, helping local actors address blockages and influencing positive VPA progress. This will contribute to FGMC outputs and outcome monitoring, notably the PMST's assessment of transformational change.
 - iii. Monitoring, evaluation and learning plan, outlining the way the project will stimulate learning and ensure adequate monitoring; linking up to FGMC's monitoring processes and working closely with the PMST. See FGMC Monitoring Framework in Annex 5. This should include a summary of key baseline information;

- iv. Annual Country Workplans, outlining activities agreed through consultation with project stakeholders, which will be updated annually and aligned to country-specific JIC workplans (where they exist);
 - v. Financial plan, outlining financial review and performance management processes, audit requirements, an asset register, and an approach to counter fraud and corruption;
 - vi. Risk register and management, outlining principal risks and plans for their treatment where needed;
 - vii. Reporting plan, outlining the schedule for drafting, reviewing, and finalisation and consistent with the FGMC reporting requirements.
56. The Supplier will be required to have the information, knowledge, experience, procedures, equipment and trained people deployed and ready to implement the project by the end of the Inception period. This must include having all necessary government approvals in place before the end of the Inception Period.

IMPLEMENTATION PERIOD

57. The implementation period will commence from the date of acceptance of the Inception Report. During the implementation period, the Supplier will:
- a. Administer the project, monitor progress, provide quality assurance, especially of facilitator performance (Suppliers should propose an approach to benchmarking in their tender response), financial control of project spending and reporting of progress with the stakeholder processes, political dynamics as well as VPA implementation progress;
 - b. Coordinate implementation with other in-country donors supporting VPA implementation and with concerned government and non-government organisations involved in the multi-stakeholder bodies established by the VPA; including:
 - i. supporting and facilitating networking amongst stakeholders, including organisation of workshops, seminars, conferences and study-tours to engage with other components of FGMC;
 - ii. promoting coordination and shared lesson learning between other development partners working in related fields;
 - c. Where needed, provide advice to national stakeholders drawing from the FGMC community of practice (guided by PMST where needed) to provide guidance on independent forest monitoring, international market requirements, due diligence requirements, international timber trade, EU Customs controls, sustainable forest land-use investment, international legal frameworks and sector governance reforms;
 - d. Promote the visibility of DFID and its overall activities under the wider FGMC programme.
58. The Supplier will operate the Facilitation Service with a view to ensuring the best value for money. It is expected that this will require a lean core staff to provide administrative services, monitoring and oversight and consolidated reporting. The proposed

Facilitators should be provided in the technical proposal and budgeted with individual fee rates in the commercial proposal.

59. The performance of the Supplier will be assessed by the PMST based on the Key Performance Indicators set out in paragraph 71.

MANAGEMENT AND OVERSIGHT

60. The Facilitation Support project will be managed directly through the Climate and Environment Department (CED) within DFID, coming under the centrally managed FGMC programme. It will report directly to FGMC's Senior Responsible Owner.
61. The Facilitation Unit's operations will be subject to the terms and conditions set out in the DFID contract.
62. The Supplier will coordinate closely with the EFI FLEGT Facility VPA teams for each concerned country to ensure that Facilitation support is targeted to the priorities established by the VPA JIC and to address any emerging concerns over the quality and nature of national stakeholder deliberations.
63. The Supplier's work will be monitored by the FGMC PMST who work under the overall supervision of the SRO. The PMST provides technical and management support to DFID across the FGMC programme, including performance monitoring of this contract. Performance monitoring will include: maintaining regular contact with the in-country facilitators, meeting with the Supplier at least once every quarter to review progress and visiting the countries at least annually to review facilitation performance with local stakeholders; receiving and reviewing quarterly reports. The PMST will work with the Facilitation Unit to establish a detailed reporting framework that will assess progress with the national stakeholder dynamic and contribute to FGMC-wide annual reporting. The Supplier will establish a strong working relationship with the PMST in the inception period, and thereafter fully support the performance monitoring tasks of the PMST, as described above, throughout the duration of the Service.
64. The PMST will report back to the SRO in CED at least quarterly on the performance of the Supplier in provision of Facilitation services and its contribution to VPA implementation progress.
65. The Supplier will be expected to contribute to the evidence (including lessons learned and best practice) gathered by the PMST for FGMC reviews and evaluations. The Supplier will also be expected to contribute evidence to the FGMC Independent Review Team on instruction of the SRO.
66. The Supplier will deliver quarterly progress reports to DFID. These reports may be shared with other concerned donors. The Supplier may therefore provide separate confidential reports on any intelligence or perspectives that they do not want shared with others. The quarterly reports will provide regular political analyses, intelligence and VPA progress updates. In particular, the Facilitators will work with the PMST to assess country-specific transformational change on an annual basis (see Annex 7).
67. If the Supplier has chosen to submit a proposal which will be delivered through a consortium model, the proposal must include a governance plan which sets out the proposed management structure and arrangements including lines of reporting and

accountability. It should elaborate how downstream partners would be engaged and managed.

FINANCIAL

68. For the inception period 100% of the suppliers' fees will be linked to fixed milestone payments: 50% upon submission of the draft report and 50% upon acceptance of the final version. Expenses will be reimbursed based on actuals, upon to the agreed ceiling for the inception phase.
69. For the implementation period, 25% of the supplier's fees will be contingent on the Key Performance Indicators described in Table 2, to be scored quarterly by DFID with inputs from the PMST monitoring and country visits, feedback from concerned country stakeholders and EFI VPA team to the SRO.
70. During the Inception period, consideration will be given to refining the KPIs based on discussions with key stakeholders, the country-specific workplans and framing other element of Implementation fees into work plan-related milestones where appropriate. Payments for all costs and expenses will be strictly in arrears. All expenditure will be against pre-agreed fee rates and project costs. All fee rates, costs and expenses should be clearly set out in the proposal and must be justified in terms of value for money.

TABLE 2

Theme	Indicator	Overall % of fee	Scoring Criteria			
			100% payment	75% payment	50% payment	0% payment
Effectiveness in delivery of the facilitation support	Timely and effective support provided to all 5 countries fostering dynamic stakeholder processes ⁵	10	Support services enabling multi-stakeholder engagement in all 5 countries are meeting the expectations set out in country-specific workplans.	Support services off track by more than 2 months in at least 1 country	Support services off track in more than 2 countries; or for more than 3 months	Support services off track in all 5 countries by over 2 months
Management: Quality	Draft quarterly and other project reports are clear, concise and timely.	10	Reports are timely and provide clear update on progress	Substantial redrafting of content required, or deadlines missed (unless revised deadlines	Reporting not signed off within one month of submission in draft (unless	Reporting due in the period not submitted by the KPI assessment date.

⁵ As indicated in paragraph 41 the country-specific workplans will propose targets for key tasks relative to the baselines confirmed during Inception period. The quarterly reports will report progress to these targets and present evidence that activities are contributing to (i) active dialogue between VPA stakeholders; (ii) functioning of stakeholder structures, (iii) an understanding of VPA progress. This progress will be verified periodically through monitoring visits of the PMST and independent review.

				agreed in advance with DFID)	agreed in advance with DFID)	
Management: Financial	Strong financial management of the facilitation services, demonstrated through: accurate and timely invoicing; accurate forecasting, and ; optimisation of value for money	5	Invoices do not require queries or correction; Strong evidence of vfm provided e.g. additional project benefits and /or savings achieved in assessment period; No more than 5% variance between annual spend and an agreed baseline forecast (unless vfm related).	More than one invoice unclearly presented or contains errors requiring correction. Weak evidence of vfm ; over 5% variance between annual spend and an agreed baseline(unless vfm related) forecast.	n/a	Repeated inaccuracies in invoicing or forecasting. No evidence that vfm is being considered in project delivery.

71. Any procurement undertaken by the Supplier will be in accordance with international best practice, although very limited procurement is anticipated. The Supplier will be required to provide capital upfront initially and claim back from DFID monthly in arrears.

72. The Supplier will be expected to generate and maintain a Delivery Chain Map that captures in visual form the names of any subcontracts and downstream partners involved in delivering the project through to the end recipient. The Map will include a summary assessment of risk identified through due diligence procedures and on-going performance monitoring of sub-partners.

MONITORING, EVALUATION, AND LEARNING

73. The country-specific annual work-plans, together with VPA implementation plans will be the main references in monitoring and reporting the effectiveness of facilitation support and progress in stakeholder engagement and inclusion.

74. The Supplier will deliver the following reports during the lifetime of the contract:

- a. Quarterly progress reports, covering progress in each country during the previous quarter, including an update on overall VPA implementation progress and an assessment of the quality of engagement of different stakeholder interests, as well as financial performance and a review of process and country risks, and submitted within 15 working days following the end of each UK financial quarter.
- b. Annual reports, covering progress and providing in depth discussion of results at the outcome and impact levels and reflecting on the learning objectives, submitted to inform the FGMC Annual review, so by June 1st of each calendar year. These reports will adopt the FGMC wide reporting template that will be provided by the PMST.

75. An Independent Project Review will take place 12 months after contract start. It will be carried out by a team identified and mobilised by the global FGMC programme.

76. Provide annual audited statements. The audit reports must be completed within six months of the completion of financial year.

77. Exit Plan, submitted in draft within 3 months before conclusion of the contract
78. The objectives and main headings of the reports will be outlined in the Inception Report. All reports are to be submitted to DFID for review within the stated timescales. With the exception of annual independent audits, all submitted reports will be reviewed by the PMST.

END OF CONTRACT ACTIVITIES

79. Three months before the expiry date of the contract the Supplier will prepare for DFID approval a draft Exit Plan which shall include plans for:
- a. disposal for all assets procured throughout the lifetime of the project in accordance with DFID procedures on asset management and disposal;
 - b. addressing any material items that are necessary or desirable for the continued co-operation of the UK Government after the contract ends;
 - c. ensuring the smooth transfer of responsibilities from the Supplier to any persons or organisations taking over such responsibilities after the contract ends;
 - d. delivering to DFID (if requested or as otherwise directed by DFID) prior to the contract end date (or termination of the contract) any finished work or unfinished materials or work-in-progress which relate to the contract;
 - e. providing DFID before the contract ends a summary of the status and next steps in relation to any on-going projects or other material and unfinished activities being conducted or monitored by the supplier;
 - f. returning all confidential information to DFID before the contract end date.
80. The Supplier should allow for a period of up to sixty days after the contract end date (or termination date) for the exit process to be properly implemented.

TRANSPARENCY

81. DFID requires Suppliers receiving and managing funds to release data on how this money is spent, in a common, standard, re-usable format and to require this level of information from immediate sub-contractors, sub-agencies and partners.
82. It is a contractual requirement for all Suppliers to comply with this approach, and to ensure they have the appropriate tools to enable routine financial reporting, publishing of accurate data and providing evidence of this to DFID. Further information is available from the International Aid Transparency Initiative (IATI): www.aidtransparency.net.

UK AID BRANDING

83. Suppliers that receive funding from DFID must use the UK aid logo on their development and humanitarian programmes to be transparent and acknowledge that they are funded by UK taxpayers. Suppliers should also acknowledge funding from the UK government in broader communications, but no publicity is to be given to this

Contract without the prior written consent of DFID. The Supplier must adhere to UK aid branding guidance. For more information see: www.gov.uk/government/publications/uk-aid-standards-for-using-the-logo .

DIGITAL

84. Suppliers that receive funding from DFID must follow UK Government's and DFID's standards for the use of digital in international development programmes. Details are available here: www.gov.uk/government/publications/guidance-on-digital-spend-advice-and-controls-for-dfid-partners-and-suppliers.

DUTY OF CARE

85. The supplier ensures the highest standards of ethical and professional conduct, respecting transparency obligations, environmental sustainability and social responsibility.
86. The Supplier is responsible for the safety and well-being of their personnel and third parties affected by their activities under this contract, including appropriate security arrangements. They will also be responsible for the provision of suitable security arrangements for their domestic and business property.
87. DFID will share available information with the Supplier on security status and related developments in-country where appropriate.
88. The Supplier is responsible for ensuring appropriate safety and security briefings for all of their Personnel working under this contract and ensuring that their Personnel register and receive briefing as outlined above. Travel advice is also available on the FCO website and the Supplier must ensure they (and their Personnel) are up-to-date with latest information.
89. The Supplier must develop their proposal on the basis of being fully responsible for Duty of Care. They must confirm in their bid that they:
- a. Fully accept responsibility for Security and Duty of Care of all programme Personnel;
 - b. Understand the potential security risks and have the knowledge and experience to develop an effective risk mitigation plan;
 - c. Have the capability to manage their Duty of Care responsibilities throughout the life of the programme.
90. Acceptance of Security and Duty of Care responsibility must be supported with evidence of capability and DFID reserves the right to clarify any aspect of this evidence. In providing evidence the bidders should consider the following questions:
- a. Have you completed an initial assessment of potential risks that demonstrates your knowledge and understanding of the security environment in Liberia, and are you satisfied that you understand the risk management implications (not solely relying on information provided by DFID)?
 - b. Have you prepared an outline plan that you consider appropriate to manage these risks at this stage (or will you do so if you are awarded the contract) and are you confident/comfortable that you can implement this effectively?

- c. Have you ensured or will you ensure that your staff are appropriately trained (including specialist training where required) before they are deployed and will you ensure that on-going training is provided where necessary?
- d. Have you an appropriate mechanism in place to monitor risk on a live/on-going basis (or will you put one in place if you are awarded the contract)?
- e. Have you ensured or will you ensure that your staff are provided with and have access to suitable equipment and will you ensure that this is reviewed and provided on an on-going basis?
- f. Have you appropriate systems in place to manage an emergency/incident if one arises?

91. As part of its Duty of Care Policy, DFID has assessed the risk of working in these countries (see below). This assessment is provided to allow the Service Provider to take reasonable steps to mitigate risks where necessary.

92. Date of Assessment: October 2018

DFID Risk Score					
Theme	Liberia	Ghana	ROC	Guyana	Cameroon
OVERALL RATING	3	1	2	2	3
FCO travel advice	3	1	2	2	4
Host nation travel advice	Not available	Not avail	Not avail	Not avail	Not avail
Transportation	3	2	3	3	3
Security	3	2	2	1	3
Civil unrest	3	1	3	2	4
Violence/crime	4	2	2	4	4
Terrorism	1	1	1	1	2
War	2	1	1	1	2
Hurricane	1	1	1	1	1
Earthquake	1	1	1	1	1
Flood	2	1	1	3	1
Medical Services	4	2	4	3	4
Nature of Project	2	2	2	2	2

key for scoring:

1 Very Low Risk	2 Low Risk	3 Med Risk	4 High Risk	5 Very High Risk
Low		Medium	High Risk	

DO NO HARM

93. DFID requires assurances regarding protection from violence, exploitation and abuse through involvement, directly or indirectly, with DFID suppliers and projects. This includes sexual exploitation and abuse, but should also be understood as all forms of physical or emotional violence or abuse and financial exploitation.
94. The supplier will be required to include a statement that they have duty of care to project stakeholders and their own staff, and that they will comply with the ethics principles in all activities. Their adherence to this duty of care, including reporting and addressing incidences, should be included in both regular and annual reporting to DFID;
95. A commitment to the ethical design and delivery of evaluations including the duty of care to informants, other project stakeholders and their own staff must be demonstrated.
96. DFID does not envisage the necessity to conduct any environmental impact assessment for the implementation of this project given that it aims to improve environmental and social safeguards of forest operations in Liberia, Ghana, Republic of Congo and Guyana. It is, nonetheless, important to adhere to principles of “Do No Harm” to the environment.

GENERAL DATA PROTECTION REGULATIONS (GDPR)

97. Please refer to the details of the GDPR relationship, status and personal data (where applicable) for this Service contract as detailed in Annex 6 which appears as standard clause 33 in section 2 of the contract.

ANNEXES

1. Country specific contexts
2. Facilitation role and skills
3. VPA background
4. FGMC Theory of Change
5. FGMC reporting framework
6. Standard contract clause related to personal data protection
7. Monitoring transformational change (PMST) (see attached file)

ANNEX1 : BACKGROUND ON COUNTRY VPAs ⁶

Ghana

1. The Ghana VPA was ratified by both parties in March 2010. The VPA text and comprehensive information on its development since then can be found on the EFI FLEGT Facility website and the Ghana Forestry Commission website.⁷ The governance reforms framed by the VPA include legal reforms, upgraded and streamlined regulatory systems, clearer rights and improved transparency.
2. Ghana's forests provide millions of people with jobs and subsistence products. Between 1990 and 2010, however, Ghana lost a third of its forest cover, or around 2.5 million hectares. Illegal logging, enabled by poor forest governance and driven in part by trade, is a major contributor to deforestation. Small-scale, illegal chainsaw loggers now fell more trees in Ghana than the formal timber sector. In 2014, the EU accounted for 25% of Ghana's timber exports in value terms and just under 20% in terms of volume
3. The VPA established a strong multi-stakeholder process to guide the governance reforms that are enshrined by the VPA—this brought industry, SME, CSO and government interests around the table to guide the process. This resulted in a national multi-stakeholder committee that oversees action and debates new policy, as well as an independent Council (timber validation council) that provides external oversight to the timber auditing functions.
4. Ghana's system to check for legal compliance is framed around seven legal principles covering the essential elements of forest production and processing and including environmental and social factors relevant to legal compliance. These include source of timber (land ownership), allocation of timber rights, timber harvesting operations, transportation, processing, trade, and fiscal obligations.
5. Ghana's Legality Assurance System aims to monitor, control and verify the management and use of Ghana's forest resources to ensure that only legal products are produced, sold and exported from Ghana. It applies to all sources of commercial timber and products produced, processed or acquired in Ghana for all markets, including timber sold on the domestic market. Ghana has invested in a Wood Tracking System that incorporates IT-based traceability controls to monitor timber movement, starting in the forest and continuing through the entire production chain. A Timber Validation Department has been established within the Forestry Commission to perform the internal audit functions of verification against the legal standard for every consignment.
6. The Timber Industry Development Division of the Forestry Commission has been designated as the national licensing authority under the VPA. It will issue FLEGT

⁶ Up to date information on the specific VPA process can be found on the EFI FLEGT website on the country specific pages: <http://www.euflegt.efi.int/vpa>

⁷ <http://www.fcghana.org/vpa/index.php> Information about the Ghana VPA can be found on the Ghana Forestry Commission website and the EFI FLEGT Facility Website: <http://www.vpaunpacked.org/vpa-text-and-annexes> and <http://www.euflegt.efi.int/ghana>

licenses for timber products exports to the EU market and to other non-EU markets. Now that the upgraded systems are in place, and legal reforms enacted, Ghana is assessing its readiness for licensing.

7. A Joint Monitoring and Review Mechanism (Ghana's JIC) composed of representatives of Ghana and EU monitors implementation. It meets at least once a year and issues an annual report, which provides details on the quantities of timber products exported to the EU, progress in implementing the VPA, actions taken to prevent illegally-produced timber products being exported to non-EU markets or traded on the domestic market and actions taken to prevent imports of illegally-produced timber products.
8. The VPA also establishes an Independent Monitor (3rd party Audit). Independent audits strengthen transparency and promote interactive monitoring to provide responsive solutions. Independent audit reports are made public.
9. The VPA is improving governance resulting in stronger monitoring, enforcement and compliance. The key aspects of governance reforms include
 - Greater participation in decision making
 - Enhanced capacity of government services and companies to address illegal logging
 - More transparency now enshrined in legislation
 - Clearer legislation: revised regulations makes clearer what operators in the timber sector must do to comply with the law and what indicators and verification measures auditors must use to assess legality. It makes it easier for the Forestry Commission and other regulatory bodies to enforce the law and for the justice system to prosecute illegal loggers.
 - Measures covering the domestic market: new measures to address illegal logging in the domestic market..
 - Empowered communities with strengthened rights and responsibilities
10. Transparency and information disclosure is a key element of the VPA, helping to ensure accountability, increase awareness of the requirements and impacts of the VPA and establish the credibility of the systems established under the agreement. The parties will produce annual public reports that review the effectiveness of actions and their impacts.
11. VPA implementation has benefitted from investments by Ghana as well as support from UK, the Netherlands, the World Bank and the EU.

Liberia

12. The Liberia VPA was signed in July 2011 and ratified in 2013. The VPA text and comprehensive information on its development since then can be found on the EFI FLEGT Facility website and the Liberia Forest Development Authority website.⁸ The governance reforms framed by the VPA include adoption of supporting regulations for the new Forest Laws, upgraded and streamlined regulatory systems, clearer rights, improved transparency and increased capacity of government services, private sector operators and CSO.
13. Forests are important contributors to Liberia's formal and informal economies. For many communities, forests are critical to livelihoods but major drivers of deforestation include slash-and-burn agriculture, charcoal production and artisanal logging. During Liberia's civil war in the 1990s and early 2000s, timber revenues were misappropriated and used to sustain the conflict. As a result, in 2003, the UN Security Council imposed sanctions on timber exports from Liberia. The UN lifted sanctions in 2006. Forest governance remains a challenge as relevant capacities are not yet in place. China is now the main importer of Liberian timber, but both Liberia and the EU expect that VPA implementation will strengthen the standing of Liberian timber products on the EU market.
14. The legality assurance system builds on existing controls managed by the outsourced Swiss firm SGS. It will verify compliance with a range of laws covering allocation of timber rights, harvesting, transport processing and trade in timber products. Liberia intends to apply the same system to all its timber exports and ultimately to products sold on its domestic market. The new systems are being built and transferred to a newly formed Legality Verification Department within the Forest Development Authority. This transfer process is on-going.
15. In addition to this legality assurance system, the VPA also commits the Government of Liberia to further forest sector governance reforms, including greater transparency of information concerning allocation and implementation of timber harvest rights and revenue sharing.
16. The VPA introduces independent third party audits that will check the functioning of the entire legality assurance system. The Agreement also indicates that civil society will contribute to monitoring the VPA and stresses Liberia's commitment to provide access to information that will allow civil society to carry out this role effectively.
17. The EU and Liberia monitor implementation of the VPA through a high-level Joint Implementation Committee (JIC), which meets biannually. Amongst its responsibilities, the JIC receives and acts on reports from an Independent Auditor. The JIC agrees an annual work plan to guide implementation including of all support projects.
18. In addition, Liberia has established a dynamic national multi-stakeholder committee to monitor implementation. This forum draws representatives from

⁸ <http://www.fda.gov.lr/vpa-flegt/old-documents/> Information about the Liberia VPA can be found on the Forest Development Authority website and the EFI FLEGT Facility Website: <http://www.vpaunpacked.org/vpa-text-and-annexes> and <http://www.euflegt.efi.int/background-liberia>

government agencies, civil society, industry and communities. It sustains stakeholder consultation and involvement.

19. The VPA provides a way for Liberia to tackle illegal logging, improve management of its forests and strengthen market opportunities for its timber products. However, to meet these expectations, significant strengthening of the capacities of government, the private sector and communities, supported by development cooperation, continues to be required. The UK, EU, Norway and the World Bank contribute to this support.

Republic of Congo

20. The Republic of Congo (ROC) signed the VPA in 2010 and it was finally ratified in 2013 with the endorsement of the Parliament of ROC. The VPA text and comprehensive information on its development since then can be found on the EFI FLEGT Facility website and the Congolese website.⁹ The governance reforms framed by the VPA include adoption of supporting regulations for the new Forest Laws, upgraded regulatory systems, clearer rights, improved transparency and increased capacity of government services, private sector operators and CSO.
21. The VPA commits RoC to develop a legal verification system to ensure and promote the trade in legally produced timber and other wood products. It aims to strengthen governance, accountability and promote stakeholder participation in the sector.
22. Congo is a country with 22 million hectares of rich forest resources. The forest sector is the second most important natural resource in the country after oil and contributes approximately 5% to GDP. The sector earns approximately 330 million USD annually in timber and timber products. The EU and China are Congo's main export markets. Most exports to the EU are of sawn wood and originate from the northern part of Congo and most wood exports to China are in the form of logs, originating from Congo's southwest region. Wood produced in Congo's northern region is exported via Cameroon, while the rest is exported from Pointe-Noire. Thus close collaboration with neighbouring VPA countries for wood in transit will be required for FLEGT licensing.
23. The VPA outlines legal requirements for wood coming from natural forests and wood harvested from commercial plantations. These legal requirements cover the 4 different types of forest titles/permits available in Congo. It draws from Congo's legislation and regulations on forestry, trade, environment, labour, agriculture, land ownership as well as international treaties signed and ratified by Congo; as such clearly it is not based on laws of Europe.
24. Congo's legality definition is framed around 5 key principles covering: (1) company registration requirements (2) access rights to zone of operation; (3) social obligations including labour requirements and participation of local communities, indigenous populations and civil society in the concession; (4) environment, forest management, harvesting, processing operations , and associated financial obligations; and (5) transport and commercialisation of timber. For each principle, criteria, indicators and verifiers have been identified to demonstrate compliance. Field testing of the systems continues with active engagement of operators.
25. A Legality Assurance System is comprehensive and covers all export markets as well as that sold on the domestic market. The FLEGT licensing scheme, once fully operational will apply to all timber products, including logs, sawn timber, veneer, plywood and furniture, among others.
26. The system includes several key elements:

⁹ <http://www.apvflegtcongo.com/> Information about the Rep of Congo VPA can be found on the website and the EFI FLEGT Facility Website: <http://www.vpaunpacked.org/vpa-text-and-annexes> and <http://www.euflegt.efi.int/republic-congo>

- Verification of compliance of forest enterprises enterprise (registration, taxes, EIAs, social agreements, labour requirements etc) resulting in a legality certificate
- Integration of company-based certification
- Traceability system to control and verify the supply chain from stump to market involving using barcodes and an associated information management system, SIGEF (Système d'information et de gestion forestière).
- Issuance of FLEGT licenses
- Independent audit

27. Congo is committed to improve transparency and will provide reliable, and in real time information relating to the sector. Public information sharing includes forest production statistics by export volumes by concession, species, value, product and operator; concession contract and allocation information; harvesting, processing and management documents (including environmental impact assessments and social agreements); special permits issued; forest financial transactions (i.e. national and local taxes paid); wood prices in Europe; verification and control reports as well as independent audits .

98. The VPA informed by a strong multi-stakeholder process is driving governance reforms, including:

- Greater participation in decision-making bringing together representatives of civil society and the private sector participated alongside government
- Enhanced capacity to address illegal logging, through the creation of a Forest Legality and Traceability Unit ; training for regional office staff the forest administration; engagement of UNIBOIS, a private sector association of small- and medium-sized enterprises, is working with the Association Technique Internationale des Bois Tropicaux, to improve standards; the Civil society organisation “Cercle d’Appui à la Gestion Durable des Forêts” coalition has been in charge of independent forest monitoring since 2013
- More transparency: a dedicated VPA website already publishes information, notably legal texts.
- Clearer legislation: through new regulations clarification of what operators in the timber sector must do to comply with the law, and the indicators and verification measures auditors will use to assess legality. Clear legislation makes it easier for the authorities to enforce the law and for the justice system to prosecute illegal loggers.
- Measures covering the domestic market will be subject to the legality assurance system, irrespective of whether they are exported or not.
- Empowered communities: the VPA includes unprecedented language on social benefits as part of the broader legal reforms. Decrees are being drafted to ensure that the existing Indigenous Peoples Law is effectively implemented, including regarding clear recognition of community rights and community forestry.

Guyana

29. The VPA text and comprehensive information on its development can be found on the EFI FLEGT Facility website and the Guyana Forestry Commission website.¹⁰ The negotiations of the VPA text have concluded, but the VPA is not yet signed. The Government of Guyana is focused on revising and enacting its forest regulations by July 2018. The two parties expect to draw negotiations to a formal close before the end of 2018. The governance reforms framed by the VPA include adoption of supporting regulations for the new Forest Laws, upgraded regulatory systems, clearer rights, improved transparency and increased capacity of government services, private sector operators and CSO
30. Forests cover 87% of Guyana and make an important contribution to the economy, providing jobs and livelihoods. In 2014, the annual deforestation rate was estimated to be 0.065%. The timber trade between Guyana and the EU accounts for up to 5-8% of Guyana's timber industry, most of these exports are destined for the UK.
31. The VPA negotiations began in December 2012. They involved the private sector, government ministries and agencies, and indigenous peoples. Through wide participation, the process aimed to foster significant national ownership, stakeholder engagement and a broad consensus that will promote effective VPA implementation. Initially they were controversial. Some believed negotiations were helping build the capacity of all stakeholders. Others thought that the process was not inclusive, was rushed and did not tackle key issues of concern to local indigenous peoples' organisations. However, since the introduction of a facilitator in 2014 the context changed radically supporting a genuine, inclusive and participatory process that has allowed for meaningful and independent inputs.
32. Enhanced capacity to address illegal logging: the process is strengthening the capacity of government, the private sector and indigenous peoples to work together to address illegality in Guyana's forest sector. DFID, the Government of Norway, the EU FAO FLEGT Project and the EU have all supported activities to ensure a fully inclusive VPA process.
33. More transparency: VPA includes an annex that lists the information the government of the timber-exporting country commits to making publicly available. Guyana has drafted this annex in consultation with stakeholders. Guyana's Forestry Commission website publishes information on the VPA process, draft VPA annexes for comments, and reports on negotiation sessions and stakeholder meetings.
34. Legal reforms and improved legal clarity: process provides opportunities to clarify what is legal and to identify overlaps, gaps and contradictions in the legal framework.
35. Guyana's VPA complements its Green State Development Strategy. In implementing the VPA, Guyana will build on its existing system to further

¹⁰ <http://www.forestry.gov.gy/voluntary-partnership-agreement-main-text/> Information about the Guyana VPA process and the negotiated VPA text can be found on the Guyana Forest Commission website and the EFI FLEGT Facility Website: <http://www.euflegt.efi.int/background-guyana>

strengthen the fight against illegal logging and associated trade, and maintain a low rate of deforestation and forest degradation. Under the VPA, the Guyana Timber Legality Assurance System (GTLAS) is based on national laws and regulations and aims to ensure that Guyana's timber products are legal. To that end, the GTLAS will guarantee the legality of harvest, transport, processing, as well as exports and imports of timber products. It will include compliance checks to provide assurance that timber products have been legally produced irrespective of the intended destination market.

36. Guyana will build and expand on its current Wood Tracking System and other Government controls to ensure the legality of its timber products. The current system is a tag and paper-based system that enables efficient monitoring of the flow of timber products for domestic and international trade. An independent evaluation of the current system assessed its suitability to be upgraded for meeting GTLAS requirements. It also identified measures and gaps to be addressed during the implementation phase to ensure timber legality through robust checks, verification and validation procedures.

CAMEROON

1. Cameroon has over 18 million hectares of forest, which is approximately 40% of its national territory. Most of this forest area has been permanently allocated to long-term forest production or conservation, with a smaller area intended for community forestry. The forest sector contributes around 6% of Cameroon's GDP. It accounts for about 30% of the value of non-oil national exports and is the greatest employer in rural areas. Forest land cover in Cameroon has declined for the last 25 years with a loss of around 1% forest cover per year, which is one of the highest deforestation rates in the Congo Basin (European Timber Trade Federation, 2016).
2. Between 2006 and 2015, average annual production was approximately 2.3 million m³. The forestry sector is also the biggest employer in rural areas. The estimated number of workers was of 168 000 in 2006, the vast majority of whom are in the informal sector. Cameroon is Africa's largest exporter of tropical hardwood to the EU, most of which is sawn timber that goes to Italy and Spain. In 2016, timber exports to the EU from Cameroon had an estimated value of EUR 300 million (about 50% of total timber exports).
3. Cameroon signed a VPA with the EU in 2011. The aims of the VPA are to strengthen forest governance, promote Cameroon's timber products and improve Cameroon's competitiveness in the international marketplace. The VPA also encourages investment in sustainable forest management and strengthens the capacity of forest stakeholders.
4. A Cameroon-EU Joint Implementation Committee oversees implementation of the VPA. Two structures make up the Joint Implementation Committee: a Joint Implementation Council and a Joint Monitoring Committee. Records of discussions are made public. At the national level, the Ministry of Forests (MINFOF, Ministère des forêts et de la faune) coordinates implementation. A National Monitoring Committee that includes representatives of stakeholder groups focuses on implementation of the VPA from the Cameroonian side.
5. Cameroon is developing the systems needed to control, verify and license legal timber. However it has encountered significant challenges in the design and development of control and information management systems that continues to frustrate efforts to implement the VPA.
6. In the context of VPA implementation, the Ministry of Forests has built the capacity of staff in charge of forest law enforcement on issues related to VPA implementation. This has included training on the 2016 penal code and on the new information and traceability tools. Small and medium enterprises have been trained to adapt to new market requirements and established a timber trade federation that represents them and links them with EU importers.
7. The VPA makes substantial commitments to transparency, an annex detailing the information the Government of Cameroon commits to disclose publicly. MINFOF has developed a dedicated VPA website to publish information. In 2016, the Government established procedures to manage and make public information relevant to the forest sector. Local civil society organisations have been deeply engaged in the issue of transparency. In 2012, the local NGO FODER (Forêts et

Développement Rural) and MINFOF launched an initiative to increase transparency and fight corruption in the forest sector. A web platform for reporting on corruption was set up in 2013 (www.anti-cor.org).

8. The VPA process has made the law relating to Cameroon's forest sector clearer. The VPA legality definition clarifies what operators in the timber sector must do to comply with the law and the indicators and verification measures auditors must use to assess legality. Clear legislation makes it easier for the police to enforce the law and for the justice system to prosecute illegal loggers.
9. It has opened up spaces for participation. Civil society representatives actively engaged in negotiating the VPA. The National Monitoring Committee, central to the implementation of the VPA, has one seat each for NGOs, local communities, indigenous peoples and representatives of communal forests. Representatives of civil society and communities have also been regularly invited to attend the Joint Monitoring Committee meetings.
10. The EU and Cameroon made a joint commitment to monitor the social, economic and environmental effects of the Agreement. Monitoring will consider whether the VPA is having the desired outcomes. It will also identify unintended negative effects for the EU and Cameroon to address and mitigate. In 2014, the Joint Monitoring Committee established a multistakeholder working group to propose a monitoring system. The working group agreed on how to involve the different stakeholders. It also proposed to hire a consultant to support developing the monitoring system. In 2016, with the help of the consultant, the EU and Cameroon agreed on a set of indicators to monitor VPA impacts. Next steps include finalising the monitoring system and establishing a baseline. The Joint Monitoring Committee is responsible for endorsing the system.
11. Owing to the extensive delays in establishing improved controls and legality verification, the EU and Cameroon have agreed to review and take stock of the VPA to reflect on a new way forward. A new workplan will be developed in early 2019.

Annex 2: FLEGT Facilitation Role and Qualifications

1. The role of the Facilitators is to ensure effective engagement of all stakeholders from the forest sector and the timber industry in a well informed and dynamic deliberative VPA process that builds local ownership in the partner countries where they are deployed.
2. The Facilitators should be seen as 'neutral' and trusted by a range of stakeholders. It is essential that the Facilitators be equally accessible and supportive to all. Their core task is to ensure that all stakeholders are informed about the process, have opportunities to engage through effective representation, put forward their interest and inputs to contribute to the VPA development.
3. The role of the Facilitators differs from a Technical Assistant (TA). Where a TA provides expertise in areas such as sustainable forest management or forest policy, the Facilitator exercises soft skills such as communication, mediation, coordination, collaboration, and problem solving to support and improve the quality of deliberative processes. The Facilitator is enabling stakeholders to engage and develop their own solutions to problems and contested issues. Therefore, "people skills" are paramount.
4. Each Facilitator should have:
 - a. 10 years working expertise in international development cooperation and/or in relevant forest sector and/or timber trade related activities;
 - b. Understanding of the country context; relevant working experience in the country preferred.
 - c. Ability to work on complex and politically sensitive issues with governments, industry, NGOs and communities;
 - d. Excellent communication and networking skills, solid writing, reporting and presentational skills, including working with senior officials and diplomats;
 - e. Expertise and ability in participatory multistakeholder processes;
 - f. Demonstrated ability of working in multi-disciplinary, international teams and in multi-cultural environments.
5. A briefing note, drawing from more than 5 years of experience in the Facilitation of VPA processes is attached

ANNEX 3: FLEGT and VPA Background

1. The European Union (EU) adopted its FLEGT Action Plan in 2003, in recognition of the increasing public concern with the social, economic and environmental consequences of illegal logging and related trade worldwide. A key element of the Action Plan is a proposal to establish voluntary partnership agreements (VPAs). Each VPA is a bilateral trade agreement negotiated between the EU and a timber-producing country. While parties enter into a VPA voluntarily, the agreement becomes legally binding when both parties have ratified it.
2. A VPA seeks to ensure that timber and timber products imported into the EU from a partner country comply with the laws of that country. To achieve this, a partner country must first decide which parts of its national legal framework will be checked and verified to confirm compliance for the purposes of the VPA and its export controls. The country must also establish a transparent system to ensure legal compliance and issue FLEGT licences. In most cases, a country will build on existing systems to achieve this.
3. A VPA differs from a typical bilateral trade agreement in several ways. First, while it is the EU and a national government that negotiate a VPA, the content of the agreement is decided in country through a deliberative consultation process that involves stakeholders from government, the private sector and civil society. Second, the two parties negotiate toward the same goals – eliminating illegal timber and improving forest governance. Third, a VPA embeds legal and governance reforms in its processes and text. As such, a VPA's unique combination of trade levers and governance reforms, and its multi-stakeholder approach to negotiation and implementation, can meet social and environmental, as well as economic goals.
4. In the context of the VPA, deliberation is a decision-making process to reach a negotiated “settlement” between the different and sometimes contested interests of each stakeholder group. Effective deliberation is based on, inter alia, clear rules of engagement, a level playing field, meaningful representation of the different interests, and incentives for the parties to reach a collective agreed outcome. The results of this national deliberation are then enshrined, through endorsement by the EU into the VPA. Reaching national consensus on the elements to the VPA and eventually agreeing on its terms with the EU is an iterative process which can take several years.
5. Implementing the VPA requires extensive work by a wide range of stakeholders coordinated by the lead government agency, usually the forest administration to establish the timber legality verification system. Apart from government regulators, these include private sector operators from large corporate enterprises to small artisanal loggers, and civil society groups representing communities and environmental interests.
6. The VPA enters into its operational phase once the partner country has established a functioning timber legality verification system to issue FLEGT licenses for all shipment of timber products exported to the EU. To date, only Indonesia has reached this stage of the VPA process.
7. FGMC programme has supported the stakeholder deliberations in 8 countries over the past few years. FGMC Facilitation support will now be focused on support to the

implementation phase in up to 5 countries helping national stakeholders secure in practice the reforms agreed in the VPA.

8. More information on the VPA process can be found in the “VPA unpacked” section of the FLEGT Facility website: <http://www.euflegt.efi.int/es/vpa-unpacked>

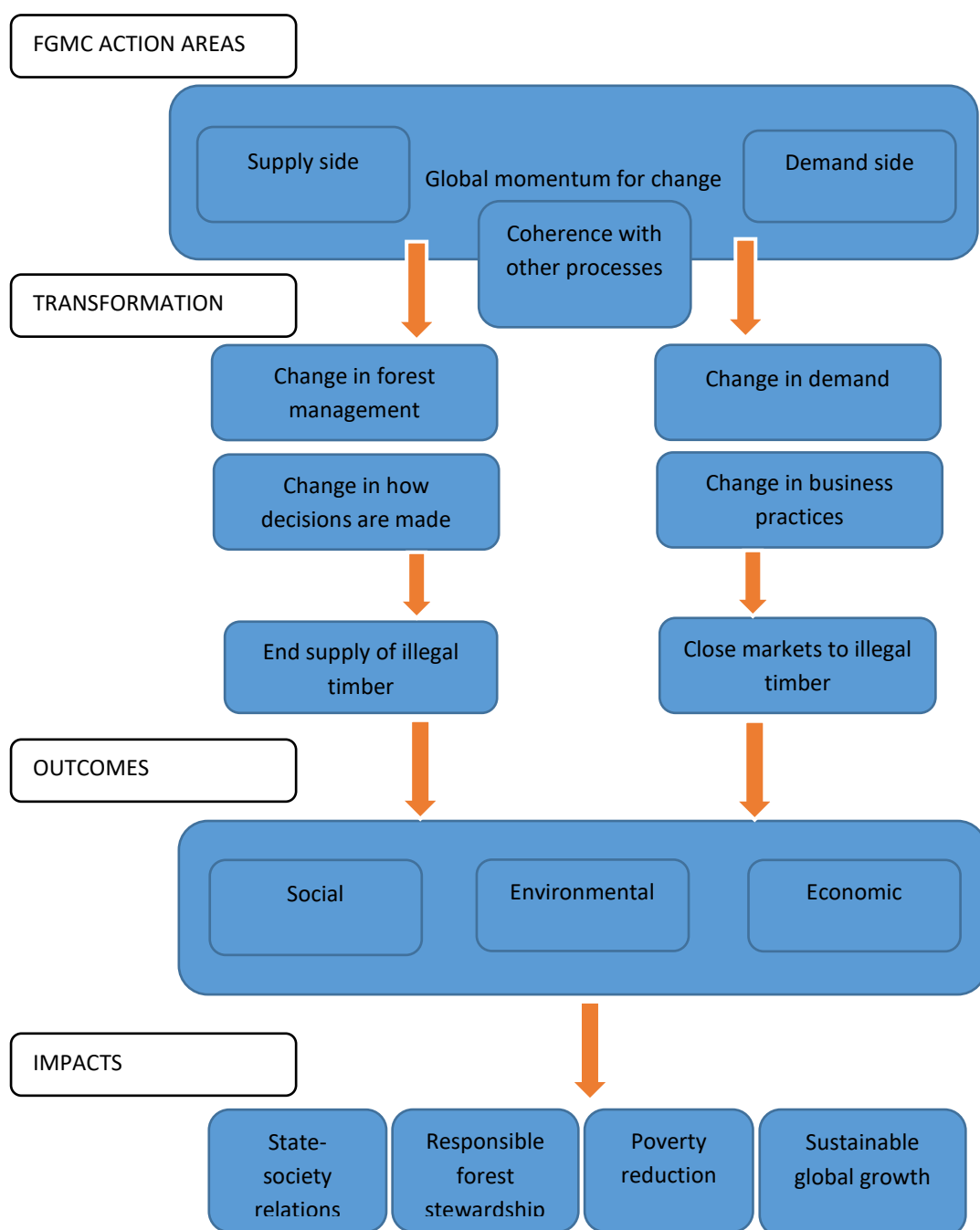
Annex 4: FGMC's theory of change in a nutshell

The central idea guiding FGMC's work is that trade and other incentives can drive transformative change in markets, governance, forest management and business practices, and that these changes will bring economic, environmental and social benefits that ultimately promote economic growth, reduce poverty, secure ecological goods and services, and build stronger, fairer and safer societies.

FGMC operates in four broad areas:

- Supporting supply side measures in timber producing countries
- Supporting demand side measures in timber consuming countries
- Building global momentum for change
- Ensuring global coherence with other processes

Figure 1 below provides a basic summary of the theory of change. The following sections of this paper explain the theory of change for each area of action in greater detail.



Demand side action: Closing markets to illegal timber products

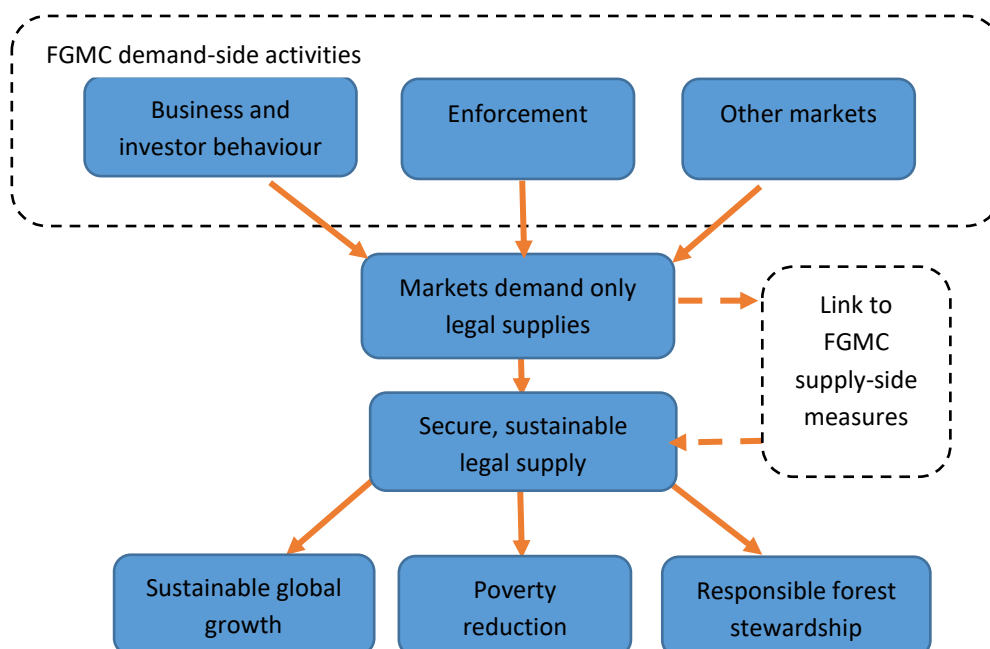
Illegally harvested timber harms legitimate businesses on the demand side of the trade by undercutting legal products on price. Illegality therefore undermines economic growth objectives. And, so long as illegal products reach international consumers, a powerful incentive for illegality and its harmful impacts remains.

At the demand side of the trade, FGMC addresses these issues by supporting activities that:

- Enhance enforcement, where regulations exist
- Improve measures in other markets, including processor countries
- Improve business practices, compliance and investor behaviour

As well as helping to close markets to illegal timber, these activities help to reinforce supply-side action and secure legal timber supplies, contributing to economic growth, poverty reduction and sustainable forest management.

Figure 2 below provides an overview of theory of change for demand-side measures



Improving enforcement

The EU, Norway, Australia and the United States all use regulation to prevent illegally-harvested timber from reaching the market. The EU Timber Regulation (EUTR), for example, prohibits anyone from placing illegally-harvested timber products on the market and requires importers to use due diligence to verify their products are from legal sources. Non-compliance can result in fines or even imprisonment.

But effective enforcement requires knowledge, evidence and capacity. FGMC therefore supports research, advocacy and communication and other activities. Examples include analyses of EUTR enforcement, training that helps NGOs raise concerns about companies or supply chains, work to inform competent authorities about issues emerging from independent forest monitoring, and assessments of risks in the forest sectors of different countries (see box: Timber Regulation Enforcement Exchange).

Promoting measures in other markets, including processor countries

Growing demand for timber in markets that are less regulated than those of the EU and others may result in illicit timber flowing to such markets to avoid stringent controls. China is particularly important as it is not only a major importer but also a major exporter of processed timber products. FGMC therefore supports activities that encourage China to address illegality in the timber it imports and verify the legality of timber products it supplies. These activities include:

- Research on overseas impacts of Chinese demand for timber, on Chinese investments in forestry in Africa and on supply chains feeding China
- Supporting development of the China Timber Legality Verification System
- Facilitating interactions between Chinese companies and authorities and their counterparts in supplier countries
- Assessing capacity of Chinese exporters to meet regulatory requirements in the EU

FGMC therefore also supports activities that relate to policies and measures to reduce consumption and trade in illegal timber in Russia, South Korea, Japan, Canada and Taiwan.

Improving business standards, compliance and investor behaviour

Company behaviour is influenced by regulation, corporate social responsibility targets, public procurement policies and pressure from consumers, NGOs and investors. Brand reputation and competitiveness in what are increasingly responsible markets are strong motivators for change. FGMC therefore supports activities that encourage businesses to improve standards and that help them understand and comply with regulatory requirements. FGMC also supports activities that targets the behaviour of investors whose decisions have implications for forests.

Supply side: Stopping the flow of illegal timber products

Addressing illegal logging at the supply side of the trade requires more than just enforcing the law. New systems and reforms are often needed, especially in places where the law is unclear, rights are fragile, resources are contested, controls are weak and corruption is widespread.

FGMC believes that for such systems and reforms to be legitimate and robust, they need to be developed through deliberative processes involving all stakeholders. FGMC therefore supports processes through which countries negotiate and implement FLEGT Voluntary Partnership Agreements (VPAs) with the EU, which requires VPA processes to be participatory.

Under a VPA, a partner country commits to developing an independently audited system for verifying the legality of its timber exports. Once this system is operating as described in the VPA, the country commits to exporting to the EU only timber products accompanied by FLEGT licences that attest to their legality. A FLEGT licence is sufficient for importers to confirm that they have met the requirements of EU Timber Regulation. Figure 3 and the text below summarise the VPA theory of change.

With quality deliberation...

FGMC identifies five factors that can generate the political will and local ownership that are critical to success (Figure 3). The main driver is the deliberative process, which should be clear about intended outcomes, procedures, participation and responsibilities, and adopt a structured approach to collective decision making. The process should be inclusive, stakeholders should have incentives and capacity to participate, and deliberation should be informed by evidence.

FGMC believes that when these criteria are met, producer countries can end the flow of illegal timber products by implementing legality assurance systems and legal and governance reforms, which they have developed through multistakeholder deliberative processes that reach legitimate and legal outcomes.

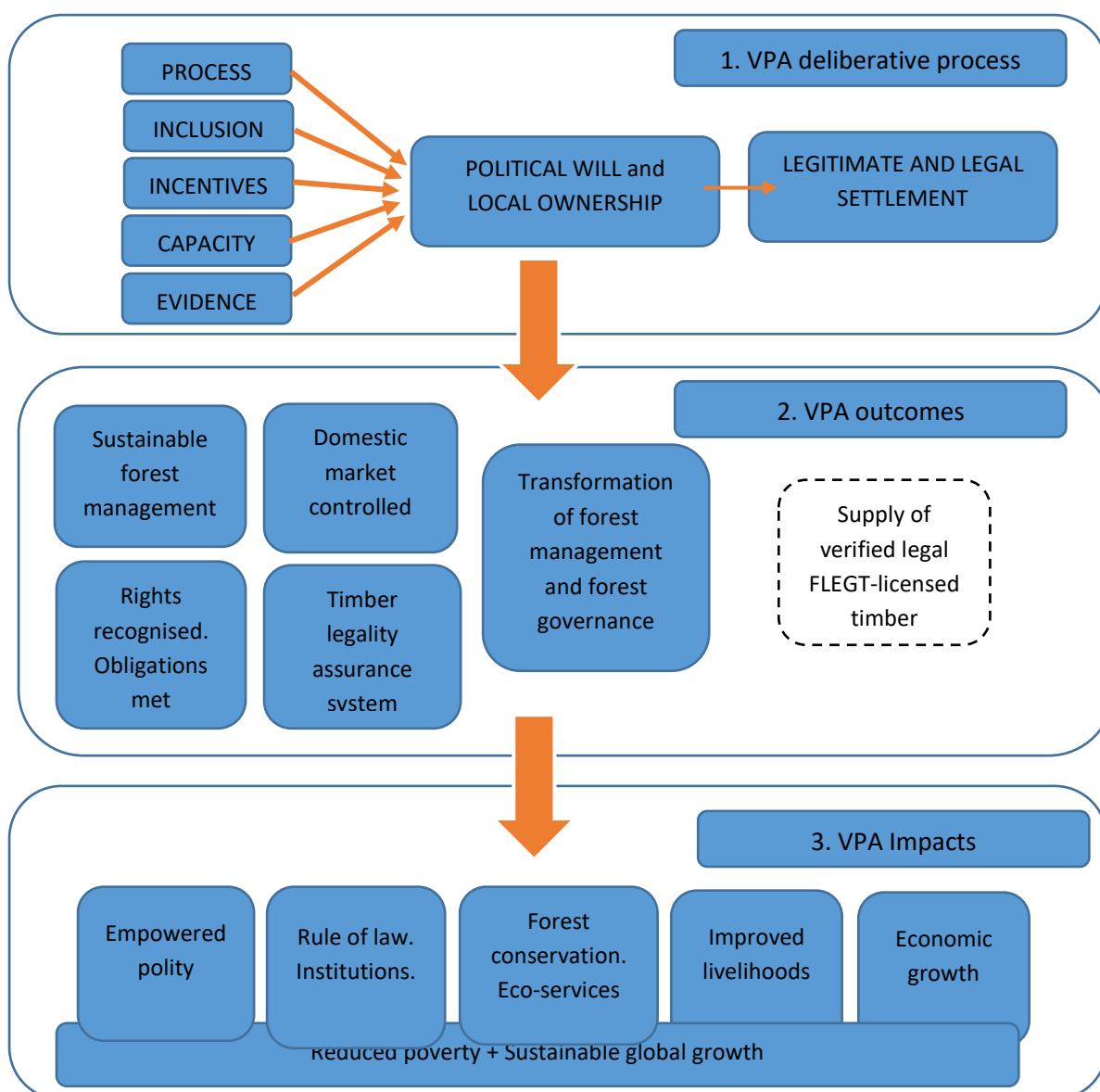
... VPAs can transform forest governance and management...

All VPAs must describe a timber legality assurance system with five elements: a legality definition, supply chain controls, verification of compliance, independent audits and FLEGT licensing of verified legal timber exports. To develop such a system stakeholders deliberate on issues such as how to define legality, what information should be made public, how to monitor implementation, and how to address rights, domestic markets and sustainability. VPA deliberations therefore transform not only the way forests are managed, but also the way they are governed. By improving legal clarity, participation and transparency, VPAs can end the supply of illegal timber, increase accountability, reduce corruption, protect rights and ensure obligations are met.

... and lead to far-reaching social, economic and environmental benefits

FGMC believes that by making and enforcing collective choices, VPA countries can achieve an equitable, legal and legitimate distribution of resources. This can improve livelihoods, increase revenue, promote sustainable forest management — with benefits for trade, biodiversity and the climate — and strengthen societies by upholding the rule of law, creating effective institutions and empowering citizens. Ultimately, these gains can help reduce poverty and boost economic growth.

Figure 3 below provides a simplified theory of change for FLEGT Voluntary Partnership Agreements



Building global momentum for change

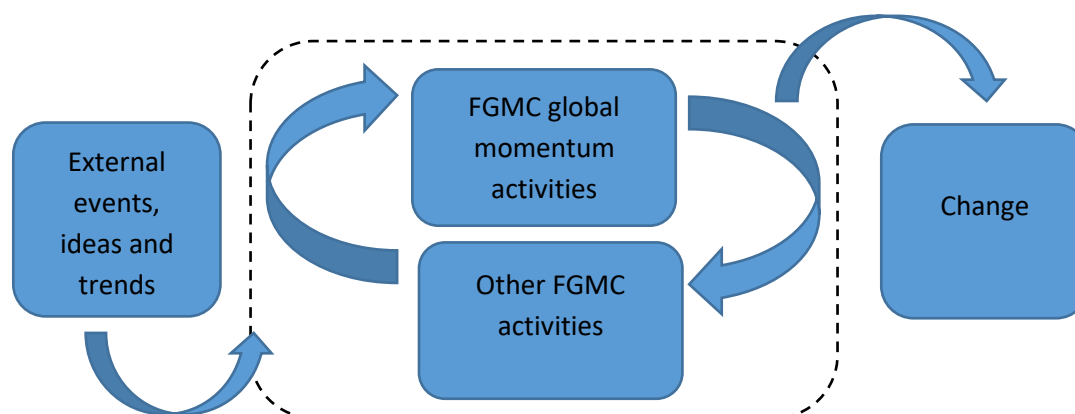
FGMC activities and the processes they relate to do not unfold in isolation. They are influenced by external ideas, events and processes — from changing political interests and economic fortunes to shifts in market requirements and the availability of new technologies. Meanwhile, lessons from FGMC activities in one context are often applicable elsewhere.

FGMC therefore sees a need to build and sustain global momentum for change, and to complement and amplify FGMC-funded activities on the demand and supply sides of the trade, helping them to adapt to changing contexts (Figure 4). As ideas, knowledge and people are what links national political processes to regional and international ones, FGMC finances activities that:

- **Build communities of practice**, including through meetings, communication, network development, training and exchanges.

- **Support policy engagement at international and global levels**, including through capacity building, research and advocacy
- **Generate evidence to inform engagement and decision-making**, including research on the effectiveness of regulations, tools that monitor forest change and assess how effective legal frameworks are at dealing with forest conversion, and databases on trade flows or forest-risk commodities and companies.

Figure 4 below presents the role of FGMC's global momentum activities in the process of change



Coherence with other forest-related processes

Illegal logging is just one of several drivers of deforestation and forest degradation. Forest clearance for agriculture or infrastructure is now a greater contributor to forest loss than the timber trade.

But while efforts to control illegal logging cannot stop forest loss on their own, they have lessons for other forest-related policies. VPA principles of inclusion, transparency, local ownership and deliberation towards collective, legal and legitimate decisions are, for instance, transferable to other contexts. Equally relevant to wider contexts are FGMC-supported demand-side approaches to regulation and business behaviour, and supply-side approaches to independent monitoring and land tenure reforms.

FGMC therefore supports activities that align action to address illegal logging with other national and international programmes, policies and processes, such as those related to:

- REDD+ (reduced emissions from deforestation and forest degradation)
- The Convention on International Trade in Endangered Species (CITES)
- The Sustainable Development Goals
- National climate change plans (a.k.a. Nationally Determined Contributions)
- Trade in commodities linked to deforestation such as palm oil and soy
- A proposed EU Action Plan on Deforestation that addresses forest conversion
- Zero-deforestation pledges
- Transparency of forest-risk commodity supply chains

Annex 5: FGMC monitoring and reporting framework

The Forest Governance, Markets and Climate (FGMC) programme is a global programme of DFID with the broad aim of bringing about governance and market reforms that reduce the illegal use of forest resources and benefit poor people who depend on forests for their livelihoods. As part of global efforts to improve forest management and tackle deforestation, FGMC supports international policy processes which tackle illegal logging in timber-producing developing countries and the trade in illegally-produced timber products, in particular, the EU Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan.

The results and outputs of the FGMC programme are set out in detail in the [FGMC Logframe](#)¹¹:

Impact:	Improved management of forests for poverty reduction, biodiversity, conservation and climate protection
Outcome:	Governance and market reforms that reduce the illegal use of forest resources and benefit poor people
Outputs:	<ul style="list-style-type: none"> ▪ Producer and processing countries: Legal legitimate and credible mechanisms of forest sector governance and management in place in producer countries ▪ Consumer actions: Public policies and private business standards that tackle trade in illegal timber ▪ Communities of practice: Increased knowledge and momentum for change ▪ Related processes: Coherence between programmes on forests and tackling deforestation at national and international levels

FGMC is delivered through a range of funded entities, supported or managed through a central team consisting of:

- **DFID FGMC Team** – The DFID Team in Climate and Environment Department (CED) are responsible for a) oversight of the FGMC programme, and b) policy engagement and advocacy work (see below).
- **Programme Management Support Team (PMST)** – The PMST is an independent, self-contained team working with, and as an extension of DFID, to implement and support FGMC activities. The PMST is responsible for managing the FGMC-funded accountable grants and overseeing implementation of facilities and projects. The PMST is housed in KPMG LLP (KPMG).
- **Independent Review Team (IRT)** – The IRT provides independent monitoring of programme outcomes, and tracks progress against the FGMC Logframe. The IRT will work closely with the PMST and DFID.

The FGMC Logframe covers activities funded through accountable grants, service contracts, MOUs, and other mechanisms. The FGMC monitoring and evaluation arrangements cover all levels of the FGMC Logframe and all activities funded under the programme, and are addressed as follows (see diagram):

- **FGMC Impacts** – Separate arrangements have been put in place to monitor impacts based on the set of ICF Key Performance Indicators.
- **FGMC Outcomes** – The PMST is responsible for tracking outcomes across FGMC based on field visits, interviews with key informants and reports. The Independent Review Team (IRT)

¹¹ http://iati.dfid.gov.uk/iati_documents/4445967.xlsx

will provide in depth, periodic, independent assessment of outcomes in specific countries and arenas and are responsible for carrying out the FGMC Mid-Term Review (MTR).

- **FGMC Outputs and Activities** – The PMST is responsible for tracking progress across the FGMC programme at output and activity levels, including results of activities undertaken by Grantees and service providers, and under MOUs. Gender, Value for money and innovation could be included as specific themes to be reported against.

All partners and contributors to the FGMC results agenda are required to report their activities and results and to facilitate the preparation of consolidated reports by mapping these onto the FGMC Logframe outputs and outcome.

FGMC Reporting Schedule

Report	Reporting period	Due date
Quarterly Reports	■ Quarterly	3 weeks following the quarter end
Annual Reports: - Annual Programme Report (APR) - Annual Financial Report (AFR)	■ Yearly: April - March (12 months)	1 calendar month <u>after</u> the end of the annual reporting period
Project Completion Report	■ Entire FGMC funding period	1 calendar month <u>before</u> the end of the grant period

Annex 6

Appendix A of Contract Section 3 (Terms of Reference) Schedule of Processing, Personal Data and Data Subjects

This schedule must be completed by the Parties in collaboration with each-other before the processing of Personal Data under the Contract.

The completed schedule must be agreed formally as part of the contract with DFID and any changes to the content of this schedule must be agreed formally with DFID under a Contract Variation.

Description	Details
Identity of the Controller and Processor for each Category of Data Subject	<p>The Parties acknowledge that for the purposes of the Data Protection Legislation, the following status will apply to personal data under this contract</p> <p>1) The Parties acknowledge that Clause 33.2 and 33.4 (Section 2 of the contract) shall not apply for the purposes of the Data Protection Legislation as the Parties are independent Controllers in accordance with Clause 33.3 in respect of the following Personal Data:</p> <ul style="list-style-type: none">Any personal data deemed necessary to collect from third party stakeholders and retain for the duration of the services, for purposes such as workshops, training and other events, communications and surveys.

Annex 7: Monitoring transformational change (PMST)